

**Respondent**  
**H Chapman**  
**HC1**  
**29 July 2020**

**IN THE WESTMINSTER MAGISTRATES' COURT**

**IN THE MATTER OF AN APPEAL UNDER THE PRIVATE HIRE VEHICLES  
(LONDON) ACT 1998**

**B E T W E E N:**

**UBER LONDON LIMITED**

**Appellant**

**-and-**

**TRANSPORT FOR LONDON**

**Respondent**

**-and-**

**LICENSED TAXI DRIVERS ASSOCIATION**

**Interested Party**

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**WITNESS STATEMENT OF HELEN CHAPMAN**

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I, **HELEN CHAPMAN**, of Transport for London ('**TfL**'), 5 Endeavour Square, London, E20 1JN, will say as follows:

1. I am employed by TfL as Director of Licensing, Regulation and Charging, a post I have held since May 2018. I held this post on an interim basis from December 2017. My responsibilities in this role include supervision of TfL's licensing and regulation of taxis and private hire vehicles, oversight of Taxi and Private Hire ('**TPH**') policy and management of the TPH and Road User Charging department at TfL including the Congestion Charge Scheme and the Ultra Low Emission Zone.

2. I have worked at TfL since 2002. I joined TfL's TPH department in 2009 as a Deputy Director, before becoming General Manager of TPH in 2013. Prior to working in TPH, I worked on congestion charging and traffic enforcement.
3. The facts and matters in this witness statement are within my own knowledge, except where I indicate otherwise. In such cases, I indicate the source of my belief and understanding and I believe the facts and matters stated to be true. I am duly authorised to make this witness statement for TfL as the Respondent in these proceedings. At various points in this statement I set out the corporate views of TfL as a whole, which accord with my own views.
4. There is now produced and shown to me a consecutively paginated bundle of documents marked "HC1", divided into various tabs, containing the documents to which I refer in this witness statement. I refer to these documents in the format **[HC1/x/y]**, where 'x' is the section and 'y' is the tab number.
5. I have read the witness statements of James Heywood and Laurel Powers-Freeling made on behalf of Uber London Limited ('ULL'), the Appellant. I refer to the statements in the format "**[Surname ¶x]**" where "Surname" is the name of the person making the statement and "x" is the paragraph number. I refer to the joint exhibit to those two statements in the format **[EX1/x/y/z]**, where "x" is the section, "y" is the tab number and, where relevant, "z" is the page number.

## **INTRODUCTION AND BACKGROUND**

### **Transport for London**

6. TfL was created under the Greater London Authority Act 1999 (**'the GLA Act'**) in 2000. Amongst other things, it is the licensing authority for the private hire vehicle (**'PHV'**) industry in London. It took over the responsibility for the Public Carriage Office from the Metropolitan Police Service (**'MPS'**).
7. TfL also regulates and licenses the taxi sector (or hackney carriages) in London. The licensing regime in respect of taxis is different from that in respect of PHVs in several important ways. Amongst other things, taxis must comply with certain

stringent rules concerning their design, turning circle, etc. Taxis are equipped with a taximeter (PHVs must not be). Taxi driving licence holders must fulfil an exacting test called 'The Knowledge' which requires them to demonstrate detailed knowledge of the London road network. PHVs must pass a much less demanding topographical test. Furthermore, taxis, are entitled to ply for hire – they may stand or drive on the street displaying their availability for hire and the driver may accept a booking directly in the vehicle.

8. TfL is required by the GLA Act to exercise its powers for the purpose of developing and implementing '*policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London*' and for the purpose of implementing the Mayor's transport strategy (see sections 141(1) and 154(3) of the GLA Act **[HC1/1/1]**). The Mayor's Transport Strategy was published in March 2018 **[HC1/2/6]** and includes the following objectives:
  - (a) Ensure that London has a safe, secure, accessible, world-class taxi and private hire service with opportunity for all providers to flourish;
  - (b) Enhance London's streets and public transport network so as to enable all Londoners, including disabled and older people, to travel spontaneously and independently, making the transport system navigable and accessible to all;  
and
  - (c) Provide an attractive whole-journey experience that will encourage greater use of public transport, walking and cycling.
9. As a consequence, when exercising its regulatory powers, TfL is required to take into account and, where necessary, balance various interests, in particular public safety, accessibility (especially for disabled, older and younger people), efficiency and the economic interests of service users.
10. Passenger safety is TfL's top concern. Its policy statement on Private Hire Services in London (as at February 2018) **[HC1/2/5]** states that: '*safety is the top priority for TfL and we closely consider an applicant's approach to safety when*

*reaching a licensing decision for a London PHV Operators (PHV operators) licence.* Safety and risk mitigation is a particular focus in new or novel areas where there is little existing evidence of the extent of risk (or potential harm) that a customer may face. As set out above, TfL also seeks to achieve an adequate quality of service for passengers and accessibility of service.

### **The PHV licensing regime and sector**

11. In part due to the factors set out above, the PHV industry is a heavily regulated sector. The Private Hire Vehicles (London) Act 1998 (**'the 1998 Act'**) is the relevant primary legislation **[HC1/1/2]**. The 1998 Act covers any vehicle seating eight or fewer passengers that is made available for hire with a driver to carry passengers, apart from public service vehicles and taxis (section 1(1) **[HC1/1/2]**). PHVs in London are subject to a regime that is distinct from black taxis or 'hackney carriages'. It is also distinct from the regime that regulates PHVs in the rest of England and Wales which is set out in the Local Government (Miscellaneous Provisions) Act 1976 (**'the 1976 Act'**).
12. The 1998 Act establishes a three-part licensing regime in the PHV sector. It requires each of a private hire operator, a private hire driver and a private hire vehicle to have a licence, in order lawfully to accept bookings and carry passengers on journeys in London. A private hire operator is defined in section 1(1)(b) **[HC1/1/2]** as an entity or person who makes provision for the invitation or acceptance of, or who accepts private hire bookings.
13. Section 2(1) of the 1998 Act **[HC1/1/2]** provides that no person shall make provision for the invitation or acceptance of, or accept, private hire bookings unless he is the holder of a private hire vehicle operator's licence for London. A person who makes provision for the invitation or acceptance of private hire bookings, or who accepts such a booking, in contravention of section 2 of the 1998 Act is guilty of a criminal offence (section 2(2)) **[HC1/1/2]**.
14. The holder of a London PHV operator's licence shall not in London accept a private hire booking other than at an operating centre specified in his licence (section 4) **[HC1/1/2]**. A London PHV operator that contravenes that provision is

guilty of an offence (section 4(5) **[HC1/1/2]**). I understand that the reason why only licensed operators can accept private hire bookings, and only at specified operating centres, is that Parliament considered it important that such bookings are accepted by persons who are fit and proper to fulfil the role. A fit and proper operator will (amongst other things) pay sufficient regard to public safety, keep proper records, handle complaints appropriately and be subject to inspection and regulation.

15. TfL is empowered by sections 3, 7 and 13 (read together with section 32(1) **[HC1/1/2]**) of the 1998 Act to issue each kind of licence and to prescribe licence conditions (which will apply to all licensees) by way of regulations in addition to those detailed in the 1998 Act.
16. The regulations that prescribe those additional licence conditions are:
  - (a) Operator licences – the Private Hire Vehicles (London) (Operators’ Licences) Regulations 2000 (SI 2000/3146) (**‘the Operators’ Licences Regulations’**);
  - (b) Driver licences – the Private Hire Vehicles (London PHV Driver’s Licences) Regulations 2003;
  - (c) Vehicle licences – the Private Hire Vehicles (London PHV Licences) Regulations 2004.
17. The relevant regulations, for the purposes of this appeal, are the Operators’ Licences Regulations (as amended); a consolidated version is exhibited to this statement **[HC1/1/3]**. TfL amends these regulations from time to time to protect passenger safety, to secure the other objectives set out in the Mayor’s Transport Strategy and to keep pace with industry changes.
18. The purpose of the Operators’ Licences Regulations, together with the 1998 Act, is to give Londoners confidence, when they use a licensed PHV operator, that they are using the services of an honest, professional organisation that will

deliver safe drivers and vehicles. This aim is clear from the specific requirements that are imposed by the Operators' Licences Regulations themselves.

19. The Operators' Licences Regulations impose a wide range of obligations on operators. By way of example only:
  - (a) Regulation 9 sets out conditions that apply to the grant of any licence. These include (Regulation 9(4)) that if: (i) any conviction is recorded against an individual operator, a partner of the operator's firm or against the officer's body or group; (ii) any information provided in the application for the grant if a licence changes; or (iii) any driver ceases to be available for the operator for the carrying out of bookings by virtue of unsatisfactory conduct in connection with the driving of a private hire vehicle, the operator must, within 14 days of the event, give the licensing authority notice containing details of the conviction or change, or in the case of an individual driver's unsatisfactory conduct, his name and the circumstances of the case **[HC1/1/3]**;
  - (b) Regulation 9(7) requires an operator to establish and maintain a procedure for dealing with complaints and lost property **[HC1/1/3]**;
  - (c) Regulation 9(13) requires an operator to notify the licensing authority of any material changes to its operating model that may affect the operator's compliance with the 1998 Act, the Operators' Licences Regulations or any conditions of that operator's licence, before those changes are made **[HC1/1/3]**;
  - (d) Regulation 14 makes clear the obligation to keep a record containing particulars of any complaint made in respect of a private hire booking accepted by the operator and any other complaint made in respect of his undertaking as an operator **[HC1/1/3]**; and
  - (e) Regulation 16 requires operators to maintain records (including records of bookings) for at least twelve months **[HC1/1/3]**.

20. Section 3(3) of the 1998 Act sets out the requirements that must be satisfied before TfL, as licensing authority, can (and must) grant a licence [HC1/1/2]<sup>1</sup>. This provides that TfL shall grant an operator's licence where it is satisfied that the applicant is a *'fit and proper person'* to hold a London PHV operator's licence and any such further requirements as TfL prescribe may be met.
21. I understand the phrase *'fit and proper'* is used in a number of statutory contexts and its meaning is context-specific: a person who is *'fit and proper'* for the purposes of one licensing regime may not be for the purposes of another. I understand that the courts have confirmed that licensing authorities may take into account *'anything which a reasonable and fair-minded decision maker, acting in good faith and with proper regard to the interests both of the public and the applicant, could properly think it right to rely on'*.<sup>2</sup>
22. I understand that the courts have also accepted that past misconduct by the licence holder is a relevant consideration to take into account in every case when considering whether to renew a licence.<sup>3</sup> The weight to be accorded to past conduct will depend on the circumstances of the case.
23. TfL publishes a guide for applicants who are applying for a London private hire operator's licence [EX1/1/16]. Part 4 refers to the statutory requirement that the applicant is a fit and proper person. The guide sets out the process that TfL will follow in reaching decisions on applications for an operator's licence(s). It also explains that TfL may impose bespoke conditions on individual licences in particular circumstances. Amongst the criteria for assessing operator's licence applications are:

*'Section 3(3) (a) \*\* - the application must be a "fit and proper" person. In order to be considered as such, applicants will be expected to demonstrate that they have complied with other legal requirements connected with*

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<sup>1</sup> If TfL concludes that those conditions are no longer satisfied, it may suspend or revoke the licence (see below).

<sup>2</sup> *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889, §23.

<sup>3</sup> *R v Knightsbridge Crown Court, Ex parte International Sporting Club (London) Ltd and Another* [1981] 3 WLR 640.

*running a business. Failure to do so could result in the refusal of an application' [EX1/1/16/340].*

24. The guide sets out the other factors that TfL will consider when determining whether a person is fit and proper to hold a licence. It refers to the requirement for applicants to declare any prior convictions, bankruptcy, director disqualification orders, requirements relating to health and safety, accounts and insurance, provide proof that the operating centre complies with local planning regulations, supply evidence of their right to work and reside in the UK and provide details of any prior licence refusals, revocations or suspensions.
25. The guide also explains, in Part 4b, that part of the consideration of an operator's licence application is an inspection of any operating centre(s) named in the application form. Applicants are expected to show that they comply with all of the administrative obligations listed in Part 4.
26. Section 3(5) of the 1998 Act [HC1/1/2] provides that '*a London PHV operator's licence shall be granted for five years or such shorter period as the licensing authority may consider appropriate in the circumstances of the case*'. I understand that this provision confers a broad discretion on TfL to decide the duration of any particular licence. The discretion must be exercised for proper reasons, but there are no constraints imposed in the legislation on the kind of factors that might justify the grant of a licence for less than five years in any particular case.
27. Section 3(4) of the 1998 Act [HC1/1/2] also provides a wide discretion to TfL to impose specific conditions on individual licences: '*a London PHV operator's licence shall be granted subject to such conditions as may be prescribed and such other conditions as the licensing authority may think fit*'. Once again, there is a broad discretion on TfL to impose conditions on an operator's licence, as long as those conditions are rational and otherwise lawful. An applicant for a PHV operator's licence may appeal a decision to impose a condition on a licence to the magistrates' court.



28. As at 15 March 2020, 111,590 individuals held current PHV driver's licences, 95,955 vehicles were licensed as private hire vehicles and 2,124 people or entities were licensed as PHV operators in London. I have provided this data as at 15 March 2020 because it pre-dates the UK Government's lockdown for England imposed on 23 March 2020 in response to the COVID-19 pandemic. By way of comparison, as at 26 July 2020, 108,425 individuals held current PHV driver's licences, 92,416 vehicles were licensed as private hire vehicles and 2,064 people or entities were licensed as PHV operators in London.
29. Operators vary in their size, from single driver-operators through to operators with thousands or tens of thousands of drivers registered to their platform. TfL's approach to regulation and licensing must accommodate a wide range of situations and levels of sophistication.
30. The traditional PHV operator business model was to receive and accept bookings by telephone at the operating centre or by attending a booking office in person. Operators ordinarily published a telephone number by which customers might get in contact and book a private hire vehicle or were located in convenient locations, to enable customers to walk in and book a journey directly at the operating centre. In other cases, passengers might simply walk into the operating centre and ask for a booking. Typically, this model of private hire operation means that drivers have closer contact with their operators or controllers which tends to include multiple visits to the operating office between bookings.
31. Advances in technology in the last ten years have significantly changed the way many private hire services are delivered in (and outside) London. Web and app-based services are now the most popular method by which PHV bookings are made and accepted. Many customers now choose to access PHV services without making a phone call and without visiting the operating centre. I think it is fair to say that the current licensing framework under the 1998 Act was not drafted with these models in mind. The internet was in its infancy in 1998 and the smartphone had not been invented. This presents challenges to TfL and other licensing authorities, in its interpretation and application of the licensing regime.

32. In 2011, the Department for Transport (**DfT**) invited the Law Commission to undertake a review of taxi and PHV licensing. The Commission published a final report with recommendations and a draft Bill on 23 May 2014 [**HC1/2/4**]. The report included a comprehensive set of proposals to update and replace existing taxi and PHV legislation. The Government has not formally responded to the Law Commission's report. The report made the following observation about licensing legislation, including the 1998 Act:

*'... even this comparatively modern legislation [1998 Act] struggles to keep up with the radical changes which the internet has introduced in the way customers book private hire services'*

33. This review by the Law Commission concluded in 2014, but given the swift advances in technology and the popularity of app-based technology around the world, including in the taxi and private hire industries, many of the recommendations made by the Law Commission are now out of date.
34. In the summer of 2017, the Task and Finish Group on Taxi and Private Hire Licensing (**'the Group'**) was established by the Minister of State for Transport and met for the first time in September 2017. I was a member of the Group. The Chair of the Group was Professor Mohammed Abdel-Haq. The Group's objectives were confirmed in the Terms of Reference agreed by its members and the Group was tasked with considering evidence relating to the adequacy of current taxi and PHV licensing authority powers, as set out in legislation and guidance, making recommendations for actions to address any priority issues identified.
35. On 9 July 2018, the Chair of the Group provided his report entitled 'Taxi and Private Hire Vehicle Licensing – Steps towards a safer and more robust system' to the Secretary of State for Transport. The Chair's report was published on 24 September 2018 [**HC1/2/8**] and included 34 recommendations for Government. In particular, recommendation 1 stated: *'Notwithstanding the specific recommendations made below, taxi and PHV legislation should be urgently revised to provide a safe, clear and up to date structure that can effectively regulate the two-tier trade as it is now'* [**HC1/2/8**].

36. On 12 February 2019, the Government published its response to the Chair's report referred to above [HC1/2/9]. The response stated in paragraph 2.3 that the response would set out what legislation the Government proposes to take forward, but it then stated: *'in the short term this does not include a full replacement of the law which regulates taxi and private hire'*.
37. On 23 June 2020, a Parliamentary Question asked the Secretary of State for Transport, in response to the Chair's report, when he planned to bring forward legislative proposals to enable national minimum standards in taxi licensing that would enable greater enforcement powers for licensing officers. The Parliamentary Under-Secretary of State for DfT stated:
- 'The Government will continue to engage with the sector on our plans for reforming the regulation of taxis and private hire vehicles, including options to introduce new legislation. The Department is supporting licensing authorities to make use of their extensive existing powers to safeguard passengers through statutory taxi and private hire vehicle standards, which will be issued shortly. The Department will consult on updated best practice guidance on other matters later this year'*.
38. On 21 July 2020, following a public consultation in 2019 the DfT published new Statutory Taxi and Private Hire Vehicle Standards to licensing authorities, outlining how they should carry out their licensing functions [HC1/2/25]. The focus of these standards is on protecting children and vulnerable adults. We are currently considering how best to take forward these standards in London where they are not already included within our regulatory framework.

### **COVID-19 pandemic**

39. This statement is written at the time of the COVID-19 pandemic which has had a significant impact on the taxi and private hire industry as well as on TfL more generally.
40. During these extraordinary circumstances, TfL has focused on supporting critical licensing and regulatory functions, primarily licence renewals and acting on any

safety-critical intelligence that is received. TfL has taken steps to mitigate the impact of COVID-19 on licensees such as allowing vehicle licences due to expire between March and June 2020 to remain licensed for a period of a further six months following the Driver and Vehicle Standards Agency announcement regarding MOTs.

41. My team and I have also been extensively liaising with the taxi and private hire industry to provide practical support and assistance. TfL has issued regular TPH Notices that have included advice from Government regarding social distancing, practical steps drivers can take to protect themselves and passengers and links to organisations providing financial advice and mental health and well-being support for drivers.
42. We have also chaired weekly conference calls with the industries to ensure that we provide them with up to date information. There have been two separate weekly calls. Firstly, a joint taxi and private hire senior representatives call. Secondly, a large operators forum with invitations to all taxi (non-regulated) and PHV operators with more than 1,000 vehicles. This is well attended including by representatives of ULL. The calls have been productive and have provided TfL with an opportunity to understand concerns put forward by the industry.
43. Contributions from all attendees on these calls have been helpful and I have found ULL's participation in these meetings to be cooperative and productive. ULL has kept TfL informed of practical changes it has implemented in response to the COVID-19 pandemic including measures to transition its staff to remote working arrangements and to notify customers opening the Uber app that they should only travel if strictly necessary and to exercise caution if they do so. ULL has also been proactive in informing TfL of other key changes, including financial assistance for drivers and changes to passenger and driver checklists.
44. Uber's CEO, Mr Dara Khosrowshahi, wrote to the Mayor of London on 3 June 2020 explaining ULL's response to the COVID-19 pandemic **[HC1/3/50]**. ULL also sent a letter to TfL on 28 July 2020 with an update on its response to the COVID-19 pandemic **[HC1/3/74]**. I consider ULL's communications with TfL

(and others) during the COVID-19 pandemic has been pragmatic and transparent.

## **Uber and ULL**

45. Mr Heywood's statement provides a description and brief history of Uber and ULL [Heywood ¶16-18]. I do not propose to provide any further detail concerning those matters in this statement.

## **ULL's licensing history**

46. On 31 May 2012, TfL granted ULL a London PHV operator's licence (licence number 7979) for a period of five years. The licence was not subject to any specific conditions.

47. On 28 February 2017, ULL made an application to TfL to renew its operator's licence for a further five years [EX1/1/1]. On 26 May 2017, TfL granted ULL a licence of four months' duration. The licence began on 31 May 2017 and expired on 30 September 2017.

48. On 22 September 2017, TfL notified ULL that its licence would not be renewed at its expiry on 30 September 2017 because it did not consider ULL to be fit and proper to hold a PHV operator's licence [EX1/1/3]. ULL appealed that decision, and by the time of the appeal hearing in 2018, ULL accepted that TfL's decision was correct. TfL's reasons for reaching that conclusion were set out in its letter dated 22 September 2017. TfL's reasons were, in brief:

(a) ULL provided materially false and misleading information to TfL in 2014 and to the High Court in 2015 as to the processes by which a booking is accepted via the Uber app.

(b) ULL had available to it for use in London a piece of software called 'Greyball', which had been used by some companies in the Uber group to evade regulatory enforcement. ULL said that it was not used for that purpose in London but it only became clear following extensive correspondence that some of those individuals responsible for ULL's

operations in London had been aware of its use for that purpose in other jurisdictions.

- (c) ULL had shown a lack of corporate responsibility in relation to a number of issues that raised public safety implications including the reporting of safety-related complaints and attempting to circumvent TfL's licensing processes that are designed to ensure the safety of passengers.

49. ULL made a number of changes to its governance and systems prior to the appeal hearing in June 2018. These changes included:

- (a) Governance: ULL changed its constitution and governance arrangements, and established the Licensed Operations Management Committee ('**LOMC**'), providing overall responsibility for ULL's compliance;
- (b) Personnel: ULL appointed a number of new non-executive directors to the Board including Ms Powers-Freeling and removed a Director;
- (c) Processes: The Uber group introduced the global Compliance Protocol and introduced a number of policies and processes to inform its decision making, and changed its relationship with ULL, ensuring that the Uber group supported ULL's regulatory compliance;
- (d) Corporate culture: ULL sought to improve its relationship with TfL and committed to proactively communicate with TfL on matters of legitimate interest to TfL as regulator. It also undertook to notify TfL of any material changes to its operating model;
- (e) Regulatory and technical understanding: ULL took steps to ensure that there was a clear and consistent internal understanding of regulatory obligations and that all regulatory communications containing technical information were thoroughly reviewed by those in ULL with a good understanding of the underlying technology;

- (f) Relationship with TfL: ULL appointed the Head of Compliance to act as a dedicated interface with TfL and to ensure that TfL had access to information that it needed; the Head of Compliance was also required to manage the compliance programme within ULL; and
- (g) Safety and criminal reporting: ULL reviewed at that time what they considered to be all of the historic reports that it had received in order to determine whether the correct action had been taken against drivers and conducted extensive analysis to identify concerning patterns of behaviour. That process was said to have been completed by the time of the appeal in 2018.

50. Consistent with ULL's concession on this point, the Chief Magistrate did not find that TfL's decision in September 2017 not to renew ULL's licence was wrong. However, taking all the evidence into account, and noting the changes made to governance and systems, she decided that ULL was a fit and proper person at the time of the appeal and granted a licence for 15 months [EX1/1/4], subject to 14 conditions that were agreed between the parties at the time of the appeal [EX1/1/5].

#### **Procedural history of the decision under appeal**

51. On 3 July 2019, ULL applied to renew its PHV operator's licence for a period of 5 years [EX1/1/6]. The application was supported with a covering letter from James Heywood, Regional General Manager for Northern and Eastern Europe, dated 3 July 2019 [EX1/1/6/94-108]. The Chair of ULL's Board, Laurel Powers-Freeling, also provided a letter of support of ULL's application to TfL [EX1/4/113] and wrote to the Deputy Mayor for Transport, Heidi Alexander, on 13 August 2019, copied to the TfL Board, in support of the application [HC1/3/32]. I responded to that letter, on behalf of the Deputy Mayor for Transport, on 4 September 2019 [HC1/3/33].
52. As above, ULL's previous licence was granted for 15 months by the Chief Magistrate on 26 June 2018. TfL had engaged in correspondence with ULL, in

the intervening period, about its operations and in relation to the various notifications it had provided to TfL in compliance with its conditions.

53. ULL's covering letter of 3 July 2019 set out its view of its performance over the past year [EX1/1/6]. It said that ULL had worked towards building TfL's trust via the changes that it had made and the commitment that it had shown in integrating those changes into its culture. It said that the conditions on its licence had given it an opportunity not just to continue operating at the standard expected of a fit and proper private hire operator, but under scrutiny, to demonstrate its commitment to a culture of transparency and compliance, providing assurance that the systems, policies, procedures and oversight mechanisms necessary for promoting compliance with its obligations under the 1998 Act. ULL concluded that the conditions imposed on its licence were effective and had become embedded in its corporate culture.
54. ULL also explained in its 3 July 2019 letter that, in its view, the two Assurance Reports, submitted in December 2018 [EX1/4/88] and June 2019 [EX1/4/112], demonstrated that ULL had complied with its regulatory obligations as a PHV operator. It also expressed the view that it had made considerable additional improvements, including safety and security related initiatives and that those improvements were now embedded in its culture. The letter described ULL's *'institutional commitment to, and capacity for, being a responsible operator, and of its long-term fitness and propriety to serve the needs of Londoners.'* It also referred to ULL's commitment to a programme of continuous improvement. ULL referred to the key points that it said illustrated the culture and governance that underpinned ULL's fitness and propriety. It said that those were:
- (a) ULL's record of compliance with its regulatory obligations (specifically the conditions) with reference to the independent assurance process;
  - (b) The steps that it had taken during the period to improve further as part of its programme of continuous improvement;
  - (c) Other safety and security-related initiatives that it had implemented;



- (d) The approach of the ULL Board, which was ultimately responsible for its regulatory compliance, and the findings of an independent audit by Independent Audit Limited of its effectiveness. Those findings provided a high level of assurance that the Board's role in providing senior-level challenge and scrutiny was working effectively and was institutionally embedded;
  - (e) The ways in which it had sought to provide TfL with greater transparency, including in response to TfL's feedback; and
  - (f) Various initiatives, which demonstrated ULL's wider contribution to London as a trusted partner to the city.
55. The 3 July 2019 letter also summarised ULL's views concerning its compliance with the 14 conditions that were imposed by the Chief Magistrate on the current licence, as well as details on the governance processes that ULL had established **[EX1/1/6]**.
56. At the time of expiry of the licence on 25 September 2019, there were two issues that TfL was still actively considering and unable to resolve. It considered that those matters were *'sufficiently substantial, and sufficiently uncertain at the current time, that a licence of two months' duration should be granted'*. Those issues – in respect of which TfL was not in possession of sufficient material to reach a secure conclusion – were:
- (a) There had been a number of cases of fraud in which certain individuals had manipulated settings on their device to upload their photograph as the profile picture on another driver's account, enabling them to take trips on that account (**'the driver photo fraud issue'**). TfL wished to find out more about precisely how many such incidents there were and to understand more fully why they had occurred; and
  - (b) An allegation made by the London Cab Drivers' Club (**'LCDC'**) (and other third parties) that Uber Britannia Limited (**'UBL'**) and ULL were unlawfully making provision for the invitation and acceptance of non-

London bookings, and accepting bookings, at ULL's offices in London, in breach of the 1976 Act.

57. In relation to (a), the driver photo fraud issue, at the time of the expiry of the licence on 25 September 2019, ULL was continuing to investigate the root causes and TfL was not in a position to fully understand the scope of this issue, its cause, its scale or the consequences that flowed from it.
58. In relation to (b), the LCDC's allegations about UBL and ULL's operations, TfL had put those allegations to ULL, and received a response, but did not have the LCDC's views on ULL's letter as to the lawfulness of ULL's operations.
59. TfL wished to consider those important issues in the round, alongside all the relevant material concerning ULL's fitness and propriety to hold a PHV operator licence in London. TfL recognised that there would always be matters that are outstanding, when taking a complex decision of this kind. Nonetheless, on 24 September 2019, TfL decided that ULL should be granted a licence for two months **[EX1/1/7]**, subject to a number of conditions including those imposed by the Chief Magistrate in 2018 and six new conditions that TfL considered necessary to ensure passenger safety **[EX1/1/8]**. TfL's September 2019 Decision Note is exhibited to this statement **[HC1/3/34]**. ULL's renewed PHV operator's licence was due to expire on 25 November 2019.
60. Following the decision on 24 September 2019 to grant a licence to ULL, TfL met and corresponded with ULL about the driver photo fraud issue and the drivers involved. ULL concluded its investigation into the root cause of the driver photo fraud issue and reported back to TfL (a summary of the driver photo fraud issue is set out elsewhere in my statement below).
61. The driver photo fraud issue was one of a number of issues that had arisen since the Chief Magistrate granted a licence to ULL in June 2018, which raised doubts for TfL concerning the overall vulnerability of ULL's systems to fraudulent exploitation or manipulation. TfL was aware of a number of examples of drivers being able to exploit vulnerabilities in ULL's systems as a consequence of changes to the platform that had generated unintended vulnerabilities or

loopholes. As well as the above issue concerning driver photo fraud, these included:

- (a) manipulation and tampering of the location settings on a device which enabled drivers to fake their location at airports;
- (b) an unauthorised software patch (available on iPhones) by which drivers could see passenger destinations and select them on that basis (at the time the passenger destination was not available to drivers before the trip had commenced). This patch was mainly used by drivers at airports;
- (c) creation of duplicate accounts by suspended or dismissed drivers;
- (d) bookings allocated to a PHV vehicle that had an expired licence and another vehicle that had been suspended by TfL; and
- (e) a YouTube video where the speaker explained how an Uber driver can fake their location into an airport.

62. As set out in paragraph 22 of TfL's September 2019 Decision Note **[HC1/3/34]**, TfL was considering carrying out a technical review of the maturity of ULL's systems and its cyber security in order better to understand the controls and processes that ULL had in place. By taking this step, TfL sought to obtain assurance that the problems identified would not reoccur.

63. During the two-month licence period, TfL therefore arranged a technical review of ULL's approach to cyber security and IT service management processes (in particular in relation to software changes and upgrades). The purpose of that review was to seek reassurance that ULL's systems and service management processes were at or above industry standard, for a company in ULL's position. On 3 October 2019, TfL appointed Cognizant Worldwide Limited (**'Cognizant'**) to carry out this technical review. Cognizant is recognised as a specialist in this field. TfL's Terms of Reference for the technical review were provided to ULL at the time **[EX1/4/130]**.

64. TfL instructed Cognizant to carry out a maturity assessment and cyber security review of ULL's systems. Cognizant's instructions asked it to:
- (a) Assess the maturity of ULL's Change, Release, Incident and Problem Management processes and for each of these service elements, there would be a documented process and evidence available showing:
    - (1) how each service element was performed;
    - (2) how impact and risk was assessed; and
    - (3) that processes existed to reverse changes that were unsuccessful.
  - (b) Assess the maturity of ULL's information security control framework by looking for adherence against relevant Cyber Security Control Policies, with consideration towards the ISO/IEC 27001 Framework, the Cyber Essentials Scheme or HM Government Information Security Assurance Standards to understand ULL's current cyber security position.
65. TfL also provided Cognizant with a number of emails from ULL identifying the types of manipulations and exploitations of vulnerabilities within ULL's systems that had occurred since June 2018.
66. Cognizant completed its reports – the IT Service Management Report ('**the ITSM Report**') [EX1/4/147] and the Security Maturity Assessment [HC1/2/13] – on 15 November 2019. The conclusions of the Cognizant Security Maturity Assessment were positive, and demonstrated that ULL was at or above the level of performance and reliability that would be expected of a company in its position.
67. Cognizant assigned Uber and ULL a maturity level between 0-5 (based on the recognised framework for such assessments – Information Technology Infrastructure Library (ITIL)). A maturity level of 0 (incomplete) would indicate the activity was not performed; a maturity level of 3 (Managed) signifies that the activity is performed, planned and has sufficient organisational resources to

support and manage it; a maturity level of 4 (Measured) indicates that the activity is performed, planned and managed and is monitored.

68. Cognizant's conclusions were:

- (a) Uber had achieved a Level 3 (Managed) for Vulnerability Management. This meant that Uber performed Vulnerability Management processes in a planned manner and had sufficient resources to support and manage them. Cognizant's view was that a global service provider like Uber should be at process maturity score of at least 3: as a result, Uber's Vulnerability Management processes met Cognizant's expectations.
- (b) Uber had achieved Level 4 (Measured) for Network Security. This meant that Uber performed Network Security checks in a planned manner and managed and monitored the outcomes. Cognizant expected a global service provider like Uber to be at process maturity score of at least 3: Uber's Network Security Management processes exceeded that expectation.
- (c) Uber had achieved Level 3 (Managed) for Cybersecurity Risk Management. This meant that Uber performed Cybersecurity Risk Management processes in a planned manner and had sufficient resources to support and manage them. However, Cognizant expected a global service provider like Uber to be at process maturity score of at least 4 in this area: Uber's Cybersecurity Risk Management process fell short of that expectation
- (d) Uber had achieved Level 4 (Measured) for Security Incident Management. That meant that Uber performs Security Incident Management processes, in a planned manner, managed and monitored the outcomes. Cognizant expected a global service provider like Uber to be at process maturity score of at least 3: Uber's Cybersecurity Risk Management process exceeded that expectation.

69. The Security Maturity Report identified a number of strengths and weaknesses within ULL's systems. However, the overall result (despite the rating for Cybersecurity Risk Management) was that this report did provide TfL with sufficient confidence that ULL had adequate systems in place in relation to vulnerability management, network security, cybersecurity and serious incident management.
70. However, the second Cognizant Report - the ITSM Report - did not provide TfL with the same level of confidence:
- (a) It assessed ULL's Change Management systems at Level 2 (Awareness), whereas Cognizant expected a global service provider like Uber to be at a process maturity score of 3.
  - (b) It assessed Uber's Release Management (the planning, design, build, configuration and testing of applications and services) at Level 2, whereas Cognizant expected Uber's systems to be at Level 3.
  - (c) It assessed Uber's Incident and Problem Management performance at Level 3; consistent with Cognizant's expectation for a company in Uber's position.
71. There were a number of major gaps identified by Cognizant in ULL's Change Management and Release Management systems, which Cognizant concluded had severe consequences, as set out in TfL's Decision Note dated 25 November 2019 ('**the Decision Note**') at paragraphs 214 to 217 [EX1/4/156/2534-2536]. In addition, although ULL's Incident and Problem Management systems were assessed at Level 3, Cognizant observed a number of gaps in the existing incident and problem management process which also gave rise to some severe consequences. These are described in the Decision Note at paragraphs 218 and 219 [EX1/4/156/2536-2537].
72. TfL shared the final version of the Cognizant reports with ULL on 15 November 2019 and invited ULL to comment and to identify any points it considered to be inaccurate. ULL's response stated, amongst other things, that the areas for

development identified by Cognizant had not, and did not, directly pose a risk to public safety, but ULL recognised that there were areas identified by Cognizant where its processes and systems could be further strengthened **[EX1/4/149/2346]**.

73. ULL also identified what it considered to be a number of inaccuracies in the ITSM Report and stated that a further review of the Release Management workstream, taking into account the points it had made, would result in a Level 3 score rather than a Level 2.
74. TfL provided Cognizant with ULL's response to their original report. It asked Cognizant to consider these representations and give its views on them. In particular, TfL asked Cognizant to consider whether any of the points raised by ULL led it to alter its conclusions. Cognizant provided its comments on 21 November 2019 **[HC1/3/37]**. Cognizant's response stated that it had carried out a thorough review of the points raised by ULL along with the new evidence shared and this new information had no material impact on its assessment observations or ratings, as set out in the original ITSM Report. Cognizant did not consider that there should be any change to the ITSM Report. Cognizant also said that the evidence shared by ULL was largely the same as that it had reviewed during the workshops except for two new items which it concluded had no significant bearing on the assessment ratings. It also said that the observations in its ITSM Report were based purely on the evidence shared and scenarios considered during the assessment workshops. Further, Cognizant provided its observations on the specific points made by ULL which have not been repeated here in this statement **[HC1/3/38-39]**.
75. ULL strongly disagreed with the conclusions in the ITSM Report, and highlighted areas that it considered to be either inaccurate or incomplete. A meeting took place between TfL, Cognizant and ULL on 22 November 2019 to discuss the ITSM Report and ULL's response to it. Following that meeting, Cognizant wrote to TfL to confirm that the information provided by ULL did not lead it to make any material changes to the ITSM Report **[HC1/3/38]**. It said that none of ULL's submission or evidence caused it to change its view and, on the contrary, the

evidence provided by ULL at the meeting served to support Cognizant's understanding and assessment.

76. Cognizant acknowledged that the new evidence provided by ULL in relation to security showed there were mechanisms to monitor security processes and controls, but said that it was difficult to trust the authenticity of that evidence unless Cognizant did a thorough investigation. However, it confirmed that, even if this new evidence were accepted at face value, it would not change the overall ratings in other areas such as the Risk Register and GRC tool, which the ITSM Report had highlighted as weak areas. Cognizant said that it would explain certain issues in more detail but this was likely to be sent after the decision concerning ULL's fitness and propriety was made. However, the bottom line was that Cognizant confirmed that its assessment as to ULL's ITSM maturity remained the same.
77. On 29 November 2019, Cognizant sent a letter to TfL which confirmed Cognizant's response to the points raised by ULL and its position on the assessment approach. Cognizant confirmed there was no change required to its Reports **[HC1/3/39]**.
78. TfL considered that, on the basis of the ITSM Report, there were a number of weaknesses in ULL's systems. These weaknesses described in the ITSM Report did not provide TfL with confidence that serious breaches and issues of the kinds described in brief above and set out in more detail below would not occur again in the future. These findings helped inform TfL's decision as to ULL's fitness and propriety to hold a PHV operator's licence.
79. On 8 November 2019, ULL made a further application for a PHV operator's licence which included a copy of the 3 July 2019 application and also identified new information that ULL considered was relevant to its application **[EX1/1/12a]**. It also included comments on the additional matters that were the subject of TfL's enquiries since 25 September 2019.
80. On 23 November 2019, Mr Khosrowshahi, wrote to TfL's then Commissioner, Mike Brown, in support of ULL's PHV operator's licence application **[HC1/3/75]**.



Mr Khosrowshahi referred to the commitment he gave in September 2017 that Uber would do everything in its power to be a better partner to London and the commitment to be more transparent, regain TfL's trust and put safety at the heart of all Uber does. He referred to ULL's record of working closely with TfL and the MPS to ensure robust reporting procedures, set up Programme ZERO to embed a culture of zero tolerance for compliance errors and the new safety features that ULL had rolled out.

81. Mr Khosrowshahi said in his letter that a business of Uber's size can never entirely eliminate safety incidents but recognised that Uber has a duty to make them as rare as possible. He said he was confident that there were stringent standards in place at Uber to ensure safety issues were dealt with seriously and swiftly, as evidenced in the latest Assurance Report. He said that Uber will keep improving the service provided to people across London and the drivers using its platform. Finally, he said that Uber remained committed to fulfilling its pledges as signatories to the Mayor's Women's Night Safety Charter and further educating drivers and passengers through its partnership with the AA, Barnardo's and UK SAYS NO MORE.
82. On 25 November 2019, TfL concluded that ULL was not fit and proper to hold a PHV operator's licence and refused ULL's application for a new PHV operator's licence. That decision is the subject of this appeal ('**the Decision**'). TfL's reasons are recorded in the Decision Note [EX1/4/156]. TfL wrote to ULL on 25 November 2019 and notified ULL of its decision ('**the Decision Letter**') [EX1/4/157].
83. On the same day, TfL published a press release regarding the Decision [HC1/2/14]. This included a statement from me as follows:

*'As the regulator of private hire services in London we are required to make a decision today on whether Uber is fit and proper to hold a licence. Safety is our absolute top priority. While we recognize Uber has made improvements, it is unacceptable that Uber has allowed passengers to get into minicabs with drivers who are potentially unlicensed and uninsured. It is clearly concerning that these issues arose, but it is also concerning that we cannot be confident that similar issues won't happen again in future. If*

*they choose to appeal, Uber will have the opportunity to publicly demonstrate to a magistrate whether it has put in place sufficient measures to ensure potential safety risks to passengers are eliminated. If they do appeal, Uber can continue to operate and we will closely scrutinize the company to ensure the management has robust controls in place to ensure safety is not compromised during any changes to the app.'*

84. On the same day, Mr Khosrowshahi tweeted the following message:

*'We understand we're held to a high bar, as we should be. But this TfL decision is just wrong. Over the last 2 years we have fundamentally changed how we operate in London. We have come very far – and we will keep going, for the millions of drivers and riders who rely on us.'*

85. On the same day, Mr Heywood publicly stated:

*'TfL's decision not to renew Uber's licence in London is extraordinary and wrong, and we will appeal. On behalf of the 3.5 million riders and 45,000 licensed drivers who depend on Uber in London, we will continue to operate as normal and will do everything we can to work with TfL to resolve this situation'.*

86. For clarity and completeness, TfL's September 2019 Decision Note **[HC1/3/34]** referred to the allegations made by LCDC that UBL and ULL were unlawfully making provision for the invitation and acceptance of non-London bookings, and accepting bookings, at ULL's offices in London, in breach of the 1976 Act. The LCDC made representations on the matter upon which ULL were asked for their views at the time of the September 2019 Decision. ULL provided its views to TfL but by the time of the Decision in November 2019, TfL had not formed a final view on the issue. This was because: (i) they raised mixed questions of fact and law and some of the relevant factual material related to operations outside TfL's licensed area; (ii) the issues raised concerned the exercise of the powers of other licensing authorities; and (iii) TfL had not received complaints from those other authorities in relation to the specific issue raised in this correspondence. Given

the nature of the Decision in November 2019, TfL did not consider it necessary to definitively resolve the issue at the time.

87. Following the Decision in November 2019, TfL wrote to the LCDC on 7 February 2020 [HC1/3/43] setting out its position in relation to the allegations being: (i) should the LCDC consider the questions they raised go to the fitness and propriety of ULL, they were entitled to seek permission to participate in the appeal by making an application to the Chief Magistrate and were notified of the date of the case management hearing; (ii) TfL was not in a position to investigate but this was a matter for relevant licensing authorities and no such authority had raised this point with TfL; (iii) the proper answer to the issues raised by LCDC are finely balanced and would ultimately have to be determined by the courts. TfL has not received any further correspondence on this issue from the LCDC and I note that they did not seek permission to participate in this appeal.
88. I have set out TfL's reasons for the Decision in more detail below.

### **STRUCTURE OF THIS STATEMENT AND SUMMARY OF TFL'S POSITION ON THIS APPEAL**

89. TfL's position on this appeal, by reference to the material before me at the time of the statement, is:
- (a) TfL was correct to decide in November 2019 that it would not renew ULL's licence by reference to its conduct and practices. ULL was not, on the evidence available at that time, a *'fit and proper person'* to hold a London PHV operator's licence and I stand by that conclusion.
  - (b) TfL has carefully considered the changes introduced by ULL in the period after November 2019. Some of those changes address some of the concerns that TfL identified in the Decision Note.
  - (c) Other changes – such as the amendments ULL has made to its change and release management process – are more difficult to assess. TfL appointed PA Consulting Services Limited (“**PA**”) to carry out a further

assessment of ULL's systems, in order to assist the Court in determining the proper outcome of this appeal. As set out in more detail below in paragraphs 267-276, PA concluded that, following changes made by ULL after the Cognizant Report, ULL's change and release management systems should be assigned a maturity rating of Level 3 and that ULL has addressed the major gaps identified within the Cognizant ITSM Assessment. This gives TfL comfort that ULL has addressed the deficiencies in its change and release management process identified by Cognizant. I note that some of the interventions were introduced as recently as March 2020. I think it is fair to say it is relatively early days and that more time is required to be confident that these interventions have sufficiently embedded.

- (d) Some additional matters which give TfL cause for concern have arisen since TfL's decision on 25 November 2019 that are relevant to the question whether ULL is fit and proper as at the date of the appeal hearing and it is therefore right to draw these to the attention of the Court. TfL's concerns include matters such as: (i) significant delays by ULL in deactivating three drivers who committed sexual assaults against passengers, (ii) further piecemeal explanations of the root cause of the driver photo fraud issue, (iii) inaccurate and inconsistent data in ULL's Assurance Reports which, in turn, requires further analysis and verification by TfL, (iv) further regulatory breaches as set out in the February 2020 and May 2020 Assurance Reports, and (v) data management issues, particularly a data outage of ULL's systems in April 2020.
- (e) As noted in paragraphs 39 - 44 above, ULL has engaged positively and productively with TfL (and in a manner that is consistent with the conduct of a fit and proper operator) during the Covid-19 pandemic on safety-related matters.

(f) The question whether, in the light of the changes made, ULL is now a *'fit and proper person'* is one for the Court, taking into account its assessment of:

(1) the seriousness of ULL's failures prior to the challenged decision in November 2019;

(2) the other issues that have arisen since the November 2019 decision;

(3) the effectiveness of the changes made by ULL, as described in its evidence and referred to below; and

(4) whether or not ULL has provided it with sufficient confidence that it will not further risk public safety through future breaches.

(g) TfL will assist the Court by pointing out where it disagrees with ULL's interpretation and understanding of the facts and by identifying those areas where TfL continues to have concerns.

(h) If, after considering the evidence, the Court determines that ULL should be granted a licence, TfL will make further submissions as to any further and consequential matters.

90. This appeal is a *de novo* hearing of the licence decision in which the Chief Magistrate retakes the decision afresh, based on the information available at the time of the appeal hearing. In those circumstances, TfL's primary function is to assist the Court by drawing attention to the relevant evidence, testing the evidence at the hearing and otherwise assisting the Court on all questions of fact and law. The critical question for the Court is whether ULL is a *'fit and proper person'* to hold a PHV operator's licence, as of the date of the appeal.

91. The remainder of my statement is in three parts:

- The first part addresses the key issues raised in the Decision Note, setting out TfL's position at the time. This is relevant, because all of that

material should be taken into account by the Chief Magistrate when determining whether or not ULL is fit and proper to hold a licence as of the date of the appeal hearing.

- The second part sets out TfL's response to the evidence filed by ULL in this appeal.
- The third part is concerned with some of the matters that have arisen since the Decision in November 2019. Parts two and three together address: (i) any changes that have been implemented by ULL or that ULL has committed to implementing, since the Decision; (ii) any further information that TfL has obtained in the intervening time; and (iii) TfL's views in respect of each matter as at the date of this statement. This part will also address additional matters that have arisen since November 2019, which TfL considers are relevant to the question of whether ULL is a fit and proper person to hold a licence.

## **PART 1: THE REASONS FOR TFL'S DECISION IN NOVEMBER 2019**

92. The Decision Note as well as the Decision Letter, set out the rationale for the Decision in November 2019 and both are provided to the Court in full. I have set out the summary paragraphs in the Decision Note below instead of repeating the full contents of the very detailed Decision Note. However, I respectfully consider that the Court would be assisted by reading the entire Decision Note (or at least those elements of it that set out why ULL's licence was not renewed) in order to appreciate all of the material that is relevant to this appeal **[EX1/4/156]**.

93. The Decision Note recorded TfL's reasons for concluding that ULL was not fit and proper to hold a PHV operator's licence as follows (paragraph 12) **[EX1/4/156/2465-2468]**:

- a) *"TfL recognises that ULL has made a significant number of positive changes and improvements to its culture, leadership and systems in the period since the Chief Magistrate granted ULL a licence in June 2018. In particular, ULL now corresponds with TfL in a transparent and productive*

*manner and has built up positive relationships with the Metropolitan Police (amongst other bodies). ULL has passed its compliance inspections and it has adopted Programme ZERO: a programme designed to drive incidents of ULL's regulatory non-compliance down to zero. All the positive matters set out above have been carefully considered and taken account of in the recommendations in this Note.*

- b) On the other hand, in the period since June 2018, ULL has reported a number of regulatory breaches to TfL. Some, indeed many, of those breaches have been extremely serious in nature. By way of example:*
- i. Some of those breaches have concerned cases in which drivers were providing PHV services without hire and reward insurance in place. Some of those cases led to ULL pleading guilty to the criminal charge of causing or permitting drivers to use vehicles on a public road for hire and reward without the requisite motor vehicle insurance policy. This is a particularly serious public safety issue. The risks to the public of uninsured drivers, offering uninsured services, are grave and acute.*
  - ii. Some of those breaches have concerned cases in which individuals were providing PHV services, via the Uber app, using another driver's login. Put simply, the individual in the car was not who they should have been. Once again, this raises important safety concerns because all of the drivers involved have engaged in fraudulent activity and therefore would not be considered fit and proper to hold a private hire driver licence in London. ULL has identified most of those individuals following several audits. Of those, a number had been suspended or dismissed by ULL and one had previously been licensed as a PHV driver, but had their licence revoked. In one case, it has not been possible to identify who was driving the car at the relevant time. For obvious reasons, once again, this raises substantial public safety concerns: the services might have been provided by an individual with a serious criminal record or a medical*

*issue and/or whose DVLA driving licence, or PHV driving licence has been revoked. The risks arising to the public are serious and substantial.*

- c) These breaches have derived, at least in part, from changes to the Uber systems and the Uber driver app, which have then been exploited by drivers. Others are the consequence of human error. ULL has taken a number of steps to address these breaches and the number of those incidents is currently falling. This progress has been taken into account.*
- d) However, these breaches raised serious doubts as to whether TfL could have sufficient confidence in ULL's ability to prevent breaches of this kind – and indeed wholly new breaches that have never occurred previously – recurring. In particular, the breaches raised concerns as to ULL's systems and processes because, at least in part, they have derived from changes or modifications to ULL's systems that have left them vulnerable to exploitation.*
- e) ULL's biannual Assurance Reports have provided some assistance in assessing ULL's ability to prevent similar breaches arising in future. Although these reports are improving, TfL has – in certain respects - found them less useful than they might have been. In the recent past, at least, those reports have failed to recognise the importance of some of the breaches that have occurred and the risks that flow from them, from the point of view of both passengers and TfL. The assurance reports alone were not sufficient to provide the necessary confidence in ULL's systems.*
- f) As a result of its lack of confidence in ULL's ability to prevent new incidents of this kind occurring, TfL commissioned two reports by Cognizant. TfL commissioned those reports in order to understand whether ULL's processes, change management and cyber security were at or above industry standard, for a company in ULL's position, which would have provided reassurance as to ULL's fitness and propriety to hold a PHV operator's licence.*



- g) *Cognizant's report into ULL's cyber security systems concluded that they were at or above the standard that Cognizant would expect, although it identified some weaknesses. This provides a significant degree of comfort in that area.*
- h) *However, the Cognizant report into ULL's IT Service Management rated ULL as below the standard that would be expected of a company in its position, in certain important respects. ULL responded to that report by way of a letter and at a meeting with Cognizant and TfL, suggesting why they considered the report was: (i) factually flawed and (ii) not an appropriate means by which to assess ULL's systems in any event. Cognizant has responded to ULL's comments and stated that they have not caused it to change its views.*
- i) *Unfortunately, as a consequence, the Cognizant reports did not provide sufficient confidence in ULL's systems and processes and, in particular, that those systems and processes are currently sufficiently robust to ensure that the kinds of serious breaches described above will not recur.*

*In all these circumstances, it is recommended that TfL concludes that ULL is not a fit and proper person to hold a PHV operator's licence."*

## **PART 2: ULL'S EVIDENCE AND ITS RESPONSE TO THE DECISION**

94. In this part of my witness statement, I respond to the evidence advanced by ULL in the witness statements of James Heywood and Laurel Powers-Freeling, both dated 3 April 2020. In particular, I identify where ULL disagrees with the conclusions set out in the Decision Note and explain TfL's response to the points made by ULL.
95. For ease of reading, I follow the various sections in the Decision Note, which are largely mirrored in the witness statements of Mr Heywood and Ms Powers-Freeling.

96. I deal with any issues and incidents arising after 3 April 2020 i.e. the date of ULL's witness evidence, in Part 3 of this statement.

**(i) TfL's overall conclusion**

97. The reasons for TfL's Decision are set out above in paragraph 93. Mr Heywood states he was '*extremely disappointed*' at TfL's decision in November 2019 that ULL was not fit and proper to hold a PHV operator's licence **[Heywood ¶14]**. In his view, ULL was fit and proper at the relevant time.

98. Nonetheless, he concedes that '*we have made mistakes and sometimes fallen short of the standards we set ourselves and of our regulatory obligations*'. Further, he states that '*the mistakes we have made are a cause of significant concern to me, as they have been for TfL*' **[Heywood ¶14]**.

99. Mr Heywood accepts that '*the Decision Letter was right to point out that we made mistakes, and that some drivers using the Uber app had managed to find ways to avoid important controls that we have in place to ensure compliance with our regulatory obligations*' **[Heywood ¶30]**. Mr Heywood also states that he was '*deeply disappointed that any of these breaches took place*' **[Heywood ¶31]**.

100. Ms Powers-Freeling states she was '*very disappointed that TfL did not decide to renew our licence*' **[Powers-Freeling ¶14]**. She also states that '*we know that we must – and do – constantly strive to improve but I believed that all the measures we had put in place since June 2018 would demonstrate that we were nevertheless fit and proper*' **[Powers-Freeling ¶14]**.

101. In overall terms, therefore, Mr Heywood and Ms Powers-Freeling accept that serious breaches have occurred in the recent past but do not concur with TfL's assessment in November 2019 that it was not fit and proper to hold an operator's licence.

102. Mr Heywood and Ms Powers-Freeling's statements describe the changes ULL has put in place to address the issues raised in the Decision Note and other changes to its systems and processes. I consider these changes separately below.

## (ii) Communication with TfL

103. This is addressed in the Decision Note at paragraphs 39-41 [EX1/4/156/2477-2478] and in Mr Heywood's statement [Heywood ¶¶36-38] and Ms Powers-Freeling's statement [Powers-Freeling ¶¶51-62].
104. Mr Heywood's statement recognises that transparent and timely communication is integral to ensuring that TfL is aware of key issues which might affect public safety with regard to ULL's functions. As noted in paragraph 41 of the Decision Note [EX1/4/156/2478], ULL's correspondence with TfL has been productive and, in the main, transparent since the Chief Magistrate's decision in June 2018.
105. Mr Heywood's statement sets out that there are a variety of reports and notifications which ULL undertakes and provides to TfL [Heywood ¶37] and that ULL has also been receptive to other forms of communication as requested by TfL [Heywood ¶37.7]. These include daily notifications of any potentially fraudulent documentation and weekly and monthly updates to TfL on investigations into potentially fraudulent documents.
106. Ms Powers-Freeling explains that she has attended four meetings with TPH senior management since June 2018 [Powers-Freeling ¶58]. I chair these meetings and agree that they have been informative. As noted in her statement, Ms Powers-Freeling also sends me updates with a summary of key issues discussed at ULL's Board meetings and minutes of sub-committee meetings, despite there being no requirement to do so [Powers-Freeling ¶60]. Ms Powers-Freeling sent the most recent minutes of the March and April 2020 sub-committee meetings to me on 7 July 2020. I have found these summaries useful.
107. Ms Powers-Freeling has invited me to attend and observe a meeting of ULL's Board and I note she refers to this in her statement [Powers-Freeling ¶59]. I feel this invitation shows an openness and transparency in a way that would not have existed had ULL not changed its approach and attitude towards TfL. However, I consider it unnecessary to attend a ULL Board meeting, although it is helpful to see the output of those meetings which provide sufficient information as to the issues considered and discussed.

108. Mr Heywood states that *'we now deliberately err on the side of sharing information with TfL early'* [Heywood ¶38]. In many cases, the timeliness, tone and substance of ULL's communication with TfL have improved since the Chief Magistrate's decision in June 2018. For example, ULL has communicated, in recent months, openly and collaboratively with TfL on important initiatives during the COVID-19 pandemic.
109. In acknowledging ULL has improved its communication with TfL since June 2018, it is important to note that ULL's communication with TfL had previously been confrontational and inadequate, which was a significant factor in TfL's decision to refuse ULL a licence in September 2017. It is essential that TfL receives transparent and comprehensive information from all private hire operators. This is fundamental as, without such full and open communication, TfL is unable properly to carry out its regulatory functions. As noted in paragraph 41 of the Decision Note, the reason why TfL has had to focus on the issue of transparency and communication with regard to ULL is because of ULL's historic practice of corresponding with TfL in an unsatisfactory manner [EX1/4/156/2478].
110. It is also right to point out that, in the period since 2018, there have been a number of specific cases in which ULL's communication with TfL has not been adequate (in particular in relation to notifications concerning the driver photo fraud issue, fraudulent insurance documents and the deactivation of three drivers for allegations of sexual assault). I address those in the relevant paragraphs below. There have also been some concerns that TfL has raised with ULL about the contents of some of the Assurance Reports, although ULL has engaged constructively in taking on board feedback from TfL to improve these Assurance Reports.
111. There is still more that ULL needs to do to improve its communications with TfL. However, notwithstanding these comments, overall, ULL's communication with TfL meets the standards to be expected of a fit and proper operator.

### (iii) Engagement with the Police

112. This is addressed at paragraphs 42-50 of the Decision Note [EX1/4/156/2478-2480]. Mr Heywood's statement also provides information about engagement with the police [Heywood ¶¶39-45].

113. TfL's position on this matter is unchanged since the Decision; it remains of the view that ULL's conduct in this area is consistent with the conclusion that it is a fit and proper person to hold a licence.

### (iv) Compliance and Programme Zero

114. TfL's primary concern, and objective, when exercising its power to make regulations in this field and to grant or refuse licenses to PHV operators, such as ULL, is the safety of the public. It is vital that passengers, who will be using vehicles and drivers arranged through the operator, are protected. Compliance by operators with their regulatory obligations is therefore of paramount importance to TfL.

115. ULL's overall record of compliance and ULL's Programme Zero are addressed at paragraphs 65-72 [EX1/4/156/2486-2487] and 88-92 [EX1/4/156/2492-2494] of the Decision Note, as well as in the statements of Ms Powers-Freeling [Powers-Freeling ¶¶35-50] and Mr Heywood [Heywood ¶¶46-57].

116. TfL's Decision Note recognised and took account of the fact that ULL has implemented "Programme Zero". ULL describes Programme Zero as an aspiration to drive the rate of ULL's regulatory breaches that it has experienced down to zero or as close to zero as possible. TfL acknowledged in paragraph 92 of its Decision Note the '*significant improvements that Programme ZERO has made. It demonstrates ULL's commitment to reduce regulatory breaches. We consider that Programme ZERO has produced some positive changes and new initiatives in ULL's operations*' [EX1/4/156/2494].

117. However, the Decision Note also made clear that whilst it is recognised that ULL's non-compliance rate is small by reference to ULL's size as a whole, the number of regulatory breaches themselves is not small. TfL remains

disappointed and concerned that there have continued to be breaches that have occurred since the Chief Magistrate's decision in June 2018 to grant a short licence to ULL subject to stringent conditions (see paras 184-185 of Decision Note) **[EX1/4/156/2524]**.

118. On 28 February 2020, ULL provided TfL with its February 2020 Assurance Report, which included details about the expansion of Programme Zero to comprise seven distinct workstreams **[EX1/4/178/2714]** (see further Mr Heywood's statement **[Heywood ¶49]**). I note that one change, since November 2019, is that ULL has hired additional agents to its Document Review Team, in order to support a second manual check of all documents (known as the 'four-eyes review'). Mr Heywood states that this recruitment will '*significantly reduce the likelihood of manual error*' **[Heywood ¶49.1]**.
119. Mr Heywood says that the February 2020 Assurance Report recorded 18 breaches between October 2019 and January 2020, which corresponds to 388 'breach-impacted trips' and he says represents an 83% reduction when compared to the same period in the previous year **[Heywood ¶51]**. Mr Heywood states that this is evidence of the impact that the results that Programme Zero is having on ULL's regulatory compliance **[Heywood ¶50]**. However, as noted below in paragraphs 218-231 of this statement, TfL identified numerous errors with ULL's February 2020 Assurance Report.
120. Whilst I recognise that there have been some improvements from the same period last year, due to the errors with the data, I do not consider that the statistics relied upon by ULL are always reliable or accurate. Even though there is a reduction in regulatory breaches occurring, even one breach means that passenger safety has potentially been compromised. I consider it unhelpful to set out statistics in the way Mr Heywood has presented them in referring to an 83% reduction. That is because in some cases, such as the driver photo fraud issue which I consider in detail below, a single 'breach' might result in thousands of journeys being affected. I think it is more helpful to focus on the number of breaches and trips affected, rather than comparing percentage statistics from one Assurance Report to another.

121. Programme ZERO is also considered in detail in Ms Powers-Freeling's statement. Ms Powers-Freeling describes the '*real impact*' of Programme ZERO and states that the number of regulatory breaches is in '*steep decline*' [**Powers-Freeling ¶47**]. With regard to the 18 breaches recorded in the February 2020 Assurance Report, she states in the foreword to that report that '*18 breaches is still 18 more than we are aiming for*' [**Powers-Freeling ¶47**].
122. TfL recognised the existence of Programme Zero, and the improvements it had produced in terms of compliance, in its Decision, but nonetheless, it still concluded that ULL was not fit and proper to hold a licence, for the reasons set out more fully in the Decision Note.
123. I note in Mr Heywood's statement that ULL has taken measures to improve training, such as Uber's partnership with the AA to create a driver training video to help drivers raise road safety standards. I do not consider these initiatives in any detail as they do not directly relate to the specific concerns raised by TfL in its Decision Note.

**(v) Management, structure and governance**

124. These issues are addressed in various places in the Decision Note, specifically paragraphs 73-87 of the Decision Note [**EX1/4/156/2488-2492**]. They have also been considered in the statements of Mr Heywood [**Heywood ¶¶33-35**] and Ms Powers-Freeling [**Powers-Freeling ¶¶16-50**].
125. As set out in paragraph 87 of the Decision Note, TfL concluded that ULL's culture and governance was consistent with that of a fit and proper operator in November 2019 [**EX1/4/156/2492**].
126. Ms Powers-Freeling's statement focuses on the culture and governance of ULL and, in particular, the further improvements that have been introduced since November 2019. She stresses that ULL has strengthened its Board membership, and in particular added expertise in relation to IT development, management and security by recruiting a Non-Executive Director, Mayank Prakash, who has

experience in leading technology teams **[Powers-Freeling ¶¶17-28]** (see also **[Heywood ¶314.1]**).

127. Ms Powers-Freeling also describes in detail the steps that have been taken to improve Board oversight of ULL's compliance with its regulatory obligations. She describes the functions and operation of the LOMC, which is responsible for the ongoing management of all aspects of ULL's licensed operations. As set out in her statement, the LOMC provides a regulatory update report directly to the Board on a monthly basis. The LOMC report sets out the details of any breaches of ULL's regulatory obligations or failures to comply with internal policies which are categorised as critical, major, moderate or minor in accordance with ULL's Breach Reporting Policy **[Powers-Freeling ¶35]**. The sub-committee meetings consider the LOMC's report and then discuss each and every breach and remediation analysis carried out by the business **[Powers-Freeling ¶36]**.

128. I also note that ULL commissioned Independent Audit Limited in March 2019 to review the operation of ULL's Board in order to identify areas for further development **[Powers-Freeling ¶¶22-27]**.

129. Ms Powers-Freeling also describes:

- (a) Certain changes to the LOMC reports, introduced after November 2019, requiring each breach to be highlighted and explained with the risks of the breach succinctly summarised and a clear path to remediation set out. **[Powers-Freeling ¶35]**.
- (b) A new methodology used by ULL to evaluate and measure safety risk, which will be added to existing compliance metrics. A score for both qualitative and quantitative components will be assigned to every breach from now on. That score will be reviewed by the ULL Board and shared with TfL **[Powers-Freeling ¶38]**.
- (c) A new categorisation of error type or root cause so that the ULL Board can see at a glance which breaches have been caused by technical failures and which have resulted from human error.



- (d) The work of Tribe Intelligent Culture Change (Tribe), a firm of safety consultants, who have examined ULL's safety and compliance culture **[Powers-Freeling ¶48]**. In November 2019, Tribe made a number of recommendations to the ULL Board sub-committee. In February 2020, ULL's Safety Team presented ULL with a high level programme of work to implement the Tribe recommendations.
- (e) The operation of the Compliance Protocol, which structures the relationship between ULL and the rest of the Uber group. According to Ms Powers-Freeling's evidence, the essence of the Compliance Protocol is to ensure that the Board has the autonomy, authority and visibility to perform its role by requiring Uber Technologies Inc. ('**UTI**'), the parent company, and Uber BV ('**UBV**'), which licenses and commercialises the app outside the Americas, to notify ULL of any app changes (or any other matters) that might affect its ability to comply with its regulatory obligations **[Powers-Freeling ¶19]**. Ms Powers-Freeling states that she communicates with Mr Khosrowshahi to resolve any issues that arise which might threaten ULL's ability to comply with its regulatory obligations **[Powers-Freeling ¶99]**.

130. I consider that the above steps and matters have indeed improved the ULL Board's oversight and understanding of the regulatory breaches, which it reviews. However, it is the root cause of the regulatory breaches themselves that is my primary concern.

#### **(vi) Insurance Issues**

131. The following issues are set out in more detail in the Decision Note at paragraphs 95-124 **[EX1/4/156/2496-2505]**. They are also set out in the evidence provided by Mr Heywood **[Heywood ¶¶61-134]** and Ms Powers-Freeling **[Powers-Freeling ¶¶72-83]**.

132. As described in the Decision Note, the various insurance-related issues fall under three separate headings:

- (a) Uninsured vehicles
- (b) Premature insurance
- (c) Fraudulent insurance

### Uninsured Vehicles

133. On 7 October 2018, during a routine on-street compliance check, TfL identified a ULL driver who was available to work on the ULL platform who did not have valid hire or reward insurance. ULL provided TfL with details on 30 October 2018 confirming that the driver had been dismissed, that ULL had reviewed all active insurance documents on its system (in excess of 60,000 documents), and through this review, had identified a further four drivers with incorrect insurance cover (para 97 of the Decision Note) **[EX1/4/156/2496]**.
134. Mr Heywood refers to a meeting on 11 April 2019 which I attended where I informed him and Ms Powers-Freeling that TfL was considering prosecuting ULL in relation to the incidents of incorrect insurance **[Heywood ¶86]**. Mr Heywood notes that a summons was issued in 'early April'. At the time of this meeting, a summons had been protectively issued due to the limitation period for criminal prosecutions. At this time, TfL was still in the process of investigating these incidents, and seeking ULL's representations about these cases in order to assist with TfL's decision as to whether to pursue prosecution proceedings against ULL and the drivers concerned.
135. Following careful consideration of ULL's representations, TfL decided to prosecute ULL and the drivers for insurance related offences. ULL faced four criminal allegations in relation to two drivers. On 31 July 2019, ULL pleaded guilty to each of the four offences and were fined a total of £28,800 and ordered to pay TfL's costs.
136. I note that Mr Heywood refers to some of District Judge Zani's judgment in his statement **[Heywood ¶88]**. It is important to note that District Judge Zani also stated:

*'What does not help them is the previous conviction. I am told that came before me at this court, some five years ago. I hope I can be forgiven for not recalling any detail about that, accepting that it either was me or one of my colleagues. In my opinion, Uber should have learned its lesson fully of what was required of it. The fact that this situation has arisen is regrettable and would have been quite easily avoidable'* [EX1/2/20/382].

137. As noted in the Decision Note, and District Judge Zani's judgment, this was the second time that ULL had been prosecuted in relation to insurance offences. In 2014, ULL was prosecuted and convicted for the same offence of causing or permitting drivers to use vehicles on a public road for hire and reward without the requisite motor vehicle insurance policy. I am not aware of any other operator that has been prosecuted twice for causing or permitting a driver to use vehicles on a public road without the requisite motor insurance in place and continued to trade.
138. On 3 February 2015, TfL sent ULL a letter regarding the conviction in 2014 and reminded ULL that *'any criminal convictions against licensed operators are a serious matter and they are rightly perceived as such by the general public'* [HC1/3/30]. TfL also stated that the conviction would be taken into account with regard to any future regulatory action involving ULL.
139. The significance of the offences are noted by ULL. Mr Heywood states *'it is a matter of deep regret and frustration that incidents of Incorrect Insurance have recurred. I also recognise that Uber's convictions are, rightly, of concern to TfL'* [Heywood ¶87]. Ms Powers-Freeling describes it as *'extremely disconcerting and, frankly, pretty embarrassing'* [Powers-Freeling ¶73].
140. Mr Heywood and Ms Powers-Freeling list various measures that ULL has taken in response to the original incidents including:
- (a) An immediate audit, which resulted in ULL reporting the four other instances of incorrect insurance referred to in paragraph 133 above.
  - (b) ULL's work with the insurance industry to drive up standards.

- (c) ULL's work to introduce increased automation, systems improvements and training, in order to reduce the likelihood of manual error. Mr Heywood also explains in detail the document approval and audit process that Uber has followed for such insurance documents since March 2019. As noted by Mr Heywood, these processes were the subject of discussions between ULL and TfL in various letters in April and May 2019 [Heywood ¶76]. The revised processes are explained in detail in Mr Heywood's statement [Heywood ¶79].
- (d) The expansion of the Instadoc system. Ms Powers-Freeling estimates that ultimately this will lead to 60-75% of TfL-licensed drivers being covered by Instadoc (see Mr Heywood's statement for an explanation of the Instadoc system [Heywood ¶122-126]).

141. Some, but not all, of these measures were taken into account in the Decision Note (see paragraph 105) [EX1/4/156/2499-2500].
142. Although Mr Heywood's statement refers to the audit identifying four further insurance policies that did not cover hire and reward, what he does not point out is that each of these drivers carried out multiple bookings, with two drivers undertaking between 1,600 and 2,000 bookings over an extended period as set out in TfL's letter to ULL dated 7 February 2019 [EX1/4/91/1139]. This is relevant to the scope and seriousness of the breach and is consistent with the point, made above, that even one regulatory breach can lead to thousands of passenger journeys being affected and potentially put those passengers' safety at risk.
143. ULL's investigations in this area – and to some extent the changes to its systems – followed from TfL's intervention, via its enforcement officers in October 2018 (when they identified a ULL driver driving with insurance which did not cover private hire work). ULL's internal system processes and procedures did not pick up on this serious issue prior to that point. It is important to note this because had it not been for TfL's intervention, those drivers could still be working for ULL and undertaking further trips without adequate insurance.

144. As noted in the Decision Note, ULL's response to this issue referred to and relied upon its contingent insurance policy, as something that would 'plug the gap' should there be any issues arising with the insurance documents held by drivers. ULL stated in its letter to TfL dated 22 February 2019 that its contingent liability insurance policy would provide coverage for any third party as a result of a claim arising from an incident during the provision of transport services using the Uber app where insurance is not otherwise available [EX1/4/92].
145. Mr Heywood refers to a letter from AIG dated 9 May 2019 [EX1/4/105] confirming such contingent insurance was in place [Heywood ¶90]. However, Mr Heywood's statement fails to note that TfL indicated to ULL in 2014 that such a contingent liability policy was insufficient, that TfL had taken advice on this point and that it did not consider that the policy would discharge ULL's liability under the Road Traffic Act 1988.
146. Mr Heywood's statement says that ULL did not seek to rely on the contingent insurance policy in the 2019 insurance proceedings as a form of defence, rather it was put forward as mitigation and was recognised as such by District Judge Zani [Heywood ¶91]. I do not consider that it is properly characterised as mitigation because TfL is clear that the policy is not sufficient or effective. I also note the further comments made by District Judge Zani to the effect that:
- 'I have taken into account what has reasonably and fairly been said on their behalf, particularly in relation to the contingent insurance liability that has been taken out, although it is important to note that it is not full protection. The policy does not provide insurance when a driver is en route to a pick-up location and that can be some distance and occur on a number of occasions during the course of a day'* [EX1/2/20/382].
147. I also note Mr Heywood's observation that the Motor Insurance Bureau ('MIB') will provide cover in cases where individuals are injured (or suffer other loss) as a result of an uninsured driving incident. While that may be correct as a question of formal legal analysis, it ignores the importance of appropriate motor insurance, as reflected in the fact that ULL's failings in this respect were a criminal offence. Additionally, it ignores the regulatory obligations concerning insurance that are

imposed upon PHV operators and vehicles. I do not consider that ULL's reliance on the MIB cover and the contingent insurance policy amounts to convincing mitigation. Rather, they suggest a failure on ULL's part to recognise the seriousness of this issue and the matters in respect of which they have been prosecuted.

### Premature insurance

148. This issue is addressed at paragraphs 108-111 of the Decision Note **[EX1/4/156/2500-2501]** and in Mr Heywood's statement **[Heywood ¶¶92-97]**. In short, ULL identified in July 2019 that it had mistakenly approved a number of insurance documents that were not yet active and that 9 drivers had taken a total of 252 trips on that basis.

149. Mr Heywood states that ULL '*immediately initiated a technical change whereby DocApprover automatically rejects any vehicle insurance document that is dated in the future, even if initially approved by an agent*' **[Heywood ¶93]**. TfL noted in para 111 of the Decision Note **[EX1/4/156/2501]** that ULL took immediate action to address this issue and also that making sure insurance is in place is a '*basic requirement for operators.*'

150. TfL took account of both the changes introduced by ULL and the fact that ULL's systems allowed this to happen in the first place (which casts doubt on the reliability of ULL's internal systems) when reaching its decision in November 2019. The Decision Note stated that having appropriate insurance in place was a basic requirement for operators and that ULL's failure to ensure this was the case was a significant breach of its obligations and raised real safety concerns.

### Fraudulent insurance

151. This issue is addressed at paragraphs 112 to 124 of the Decision Note **[EX1/4/156/2501-2505]** and in Ms Powers-Freeling's statement **[Powers-Freeling ¶¶78-83]** and Mr Heywood's statement **[Heywood ¶¶98-134]**.

152. In short, TfL's concerns in this area followed notification by ULL of a number of instances in which fraudulent insurance documents had been uploaded to Uber's platform.
153. Mr Heywood says in his statement *'I fully appreciate the seriousness of fraudulent insurance documents'* [Heywood ¶100]. He then provides a detailed explanation of changes made as part of Programme ZERO to ULL's document validation process and expresses confidence that ULL's systems for identifying fraudulent documents, which rely on experienced agents to review these documents, are robust, rigorous and extensive [Heywood ¶101].
154. The checks now in place to identify fraudulent documentation were considered in the Decision Note. TfL referred in paragraph 121 to these changes as *'significant, sophisticated and extensive and are likely to lead to better results within ULL's systems'* [EX1/4/156/2504-2505]. TfL acknowledged in the Decision Note that the October 2019 Assurance Report recorded only one incident between 1 June and 30 September 2019 where a driver had uploaded a fraudulent insurance document and the same report referred to two concluded incidents that occurred prior to 1 June 2019 of fraudulent insurance certificates being uploaded by the driver which were not included in the June 2019 Assurance Report.
155. ULL has taken steps to reduce the risk of fraudulent documents being uploaded; albeit that such risks should not have occurred in the first place. Those changes appear to have improved ULL's systems and reduced incidents of this kind, although TfL's expectation is that such incidents should not be occurring. ULL has taken further steps in the interim, in particular in relation to the Instadoc system, which ULL considers will contribute to reducing human error in relation to insurance documents. This is considered further below in paragraphs 353-364.
156. Mr Heywood considers, in turn, the three main criticisms from TfL with regard to fraudulent insurance.

157. In paragraph 112 of the Decision Note, TfL raised concerns that it had to encourage ULL to review fully not only insurance documents that may potentially be fraudulent, but also other documents e.g. MOT certificates [EX1/4/156/2501-2502]. As recorded in the Decision Note, we were not confident that ULL would have taken the initiative to broaden its review and treat other suspicious documentation in the same way as insurance documentation.
158. Mr Heywood's response to this is to state that '*Uber treats all suspicious documentation with the utmost seriousness*' [Heywood ¶112] and to offer an example of a driver who had been deactivated because they uploaded a fraudulent MOT certificate. However, he then focuses on justifying why priority should be given to review of insurance documentation [Heywood ¶113]. This seems to miss the point of TfL's concern. TfL agrees that insurance documentation should be prioritised in any audit or review regarding fraudulent documentation. However, this should not be to the exclusion of other instances of potential fraud in relation to other documents. TfL was concerned by ULL's apparent lack of curiosity in undertaking a full and comprehensive audit of other forms of documentation without TfL's intervention. Mr Heywood's statement does not fully and squarely address that question.
159. TfL's second criticism concerned the fact that ULL's historic practice, now altered, was to allow drivers to continue driving while it investigated whether or not their documents (including insurance documents) were fraudulent. Mr Heywood accepts that criticism: '*I agree with TfL that our original policy did not fully consider the implications of uninsured drivers*' [Heywood ¶114]. He concedes that this policy '*was not in keeping with the seriousness with which we deal with fraudulent documentation, and it was right that we changed it in September 2018 such that a driver is now suspended, and therefore no longer able to drive on the platform, the moment that a document is flagged as potentially fraudulent, and deactivated when it is confirmed that they were responsible for the fraud*' [Heywood ¶115].
160. TfL's third concern was that the issue of fraudulent documentation was first brought to TfL's attention by ULL on 4 February 2019, but TfL does not consider



that it was properly escalated to TfL via normal established routes. Mr Heywood also accepts this and states '*I do recognise that, given the seriousness of this issue, it would have been better to have also escalated this separately to the TfL senior licensing team*' [Heywood ¶117]. This provides an example of ULL failing to identify the seriousness of safety-related issues and the need for senior officials at TfL to be informed promptly.

161. I note that Mr Heywood professes deep '*regret that instances of Incorrect, Premature and Fraudulent Insurance have occurred*' [Heywood ¶133].

162. In conclusion, ULL has acknowledged flaws in its historic systems and approach with regard to insurance issues. It has taken steps to improve these systems and its approach. However, as detailed in paragraphs 356-362 below, the expansion of coverage of Instadoc by ULL has revealed dozens of further drivers who have submitted fraudulent insurance documents. This demonstrates there remains much to be done by ULL to address the issue of fraudulent documentation.

#### **(vii) Driver photo fraud**

163. This issue is set out at paragraphs 125 to 166 of the Decision Note [EX1/4/156/2506-2518] and in Mr Heywood's statement [Heywood ¶¶135-195]. The background facts are detailed in the Decision Note, but the key points are summarised as follows:

- (a) On 14 November 2018, ULL sent TfL a PHV105 notification concerning a driver who had been dismissed. ULL had become aware (on 13 October 2018) that the individual driving the vehicle was male, while the name on the account was female. Although TfL received notification of this driver dismissal, the information contained in it was vague. Several PHV 105 notifications received at the time described as the dismissal as triggered by the driver '*performing fraudulent activity whilst using the Uber app*' but offered no further specifics.
- (b) On 28 February and 8 March 2019, ULL was notified by passengers of two further cases of a profile photo not matching the driver

[**Heywood ¶136.2**]. According to Mr Heywood's statement, as a consequence of an internal audit, ULL identified three other cases by 23 April 2019 [**Heywood ¶136.2**].

- (c) The matter was reported to the ULL Board as 'major breaches' on 25 March 2019 and reported back as 'critical breaches' in May 2019. At paragraph 85 of the Decision Note, TfL identifies that there was some delay in this matter being escalated to the ULL Board [**EX1/4/156/2491**]. I note that Ms Powers-Freeling agrees. She also considers that the matters were reported too slowly to the Board: '*we were surprised that it had taken so long for this issue to be reported to the Board*' [**Powers-Freeling ¶88**].
- (d) ULL included the driver photo fraud issue in an update to TfL on 31 May 2019 which provided a general round-up of ULL's key activities over the past month. In correspondence with TfL, ULL confirmed that it did not initially consider this to be a safety issue. Therefore, it was not escalated to TfL in the normal way, as a safety matter, which involves specific written notification directly to TfL's senior management.
- (e) The issue was also identified in Appendix 2 to ULL's June 2019 Assurance Report which referred to six instances of fraud. It was not referred to in the main body of the Assurance Report, despite the serious safety implications of this conduct. The Assurance Report set out the mechanics of how drivers might enter into this fraud: by 'spoofing' the location of the vehicle such that the Uber app thought it was in another country (where partners are allowed to change their profile pictures). This was done by merely switching off the GPS settings on the app. A second vulnerability within an historic iteration of the app was also identified.
- (f) TfL sent an email to ULL on 14 August 2019 and enquired how many trips had been undertaken by the unauthorised drivers in question after the profile pictures had been swapped [**EX1/4/119**]. On 22

August 2019, ULL replied and stated that, following an internal audit process it was now clear that there had been a further 15 instances of similar fraud: the total number of cases was now 21 [EX1/4/119]. ULL was not able to identify two of the drivers who had used the app: they may not have been London PHV drivers at all or they may have been previously licensed, but since revoked or refused.

- (g) TfL sent a letter to ULL on 5 September 2019 and sought specific details about the cases including the number of trips carried out and whether the drivers involved were licensed by TfL at the time [EX1/4/123]. ULL's reply of 12 September 2019 provided that the time window during which drivers had been able to change their profile pictures was wider than it originally understood as incidents had occurred between at least 12 August 2018 to 20 January 2019 [EX1/4/126]. ULL said that the original breach was miscategorised, ULL did not identify it as a regulatory breach and it should have appeared in the December 2018 Assurance Report. ULL also said that 9 of the 15 cases that were identified in the 22 August 2019 email could and should have been included in the June 2019 Assurance Review. ULL also confirmed that investigations were ongoing and it had not reached a conclusion as to the root causes of this issue. ULL confirmed that 13,850 trips that were affected by the driver photo fraud issue. One of the drivers who could not be identified had taken 539 trips.
- (h) At the time of the expiry of ULL's licence at the end of September 2019, TfL did not have a full and clear picture of the relevant events and their causes and questions remained as to how many unauthorised drivers, whether licensed or not, may have been able to manipulate the app and undertake trips. ULL was still investigating this matter and had not identified all of the root causes. TfL's decision to grant a two month licence to ULL in September 2019 gave TfL the opportunity to explore this issue further in correspondence with ULL, as well as ULL's approach to handling safety related complaints

effectively and insurance obligations. TfL met with ULL on 26 September 2019 **[HC1/2/10]** and said it would be exploring ULL's complaints handling process, proposed to inspect complaints at ULL's London offices and would request further information about passenger safety related incidents and complaints. TfL sent an email to ULL on 9 October 2019 requesting a visit to ULL's London offices to review the complaints history for each of the drivers who were involved in driver photo fraud, and requested further information about the drivers involved **[HC1/3/35]**.

- (i) TfL held a further meeting with ULL on 11 October **[HC1/2/11]** at which ULL provided an update on its ongoing review of customer complaints received relating to driver photo fraud. At that meeting, TfL was clear that it was seeking assurance from ULL that it had identified all such instances that have taken place and ULL confirmed that it would review the scope of its complaints review to identify all cases and would be providing TfL with more information on its findings once complete. TfL attended ULL's London office on 15 October 2019 to obtain further information in relation to the driver photo fraud issue directly from ULL's systems. TfL noted with some surprise that ULL did not have a centralised tool to store and access relevant information; this raised doubts on the part of TfL as to the ease with which ULL was able to accurately and efficiently find and analyse complaints that were on a driver's record. A further meeting was held between TfL and ULL on 16 October 2019 **[HC1/2/12]** at which TfL gave an update on its visit to ULL's offices on 15 October 2019, and highlighted issues that it had picked up as part of its review which included some safety related complaints that were not sent to TfL as part of ULL's processes for informing TfL of driver dismissals (PHV105 notifications).. On 17 October 2019, TfL sought further information from ULL about the drivers involved and an explanation about why this issue could not occur in the future **[HC1/3/36]**.

- (j) On 22 October 2019, ULL provided further details of some of the drivers involved in the driver photo fraud issue, including a further case of driver photo fraud that had been identified following a further audit which was undertaken using a wider timeframe **[EX1/4/136]**. It also noted that one of the cases that it had originally treated as being driver photo fraud (as reported to TfL in ULL's letter of 22 August 2019) in fact involved the Private Hire Driver's Licence and DVLA Driving Licence belonging to one driver being uploaded to the account of another driver and the name on the account changed. TfL was concerned that ULL may be unclear about the actual nature of these incidents.
  
- (k) On 25 October 2019, ULL provided TfL with the full driver complaint histories of 40 drivers that it said were involved in 21 cases of driver photo fraud **[EX1/4/138]**. There were 40 drivers involved in these cases because the drivers whose account had been altered were complicit in the fraud by giving access to their account to the unauthorised person. ULL's email of 25 October 2019 included another driver that had subsequently been identified by ULL following a further audit it had undertaken. It also referred to 20 complaints about the drivers which were classed as "safety related complaints" that were omitted from the PHV105 dismissal forms that TfL received for the drivers.
  
- (l) ULL provided a summary of the issue and actions it had taken with regard to driver photo fraud issue on 25 October 2019, identifying the technical vulnerabilities to ULL's systems.
  
- (m) TfL reviewed the complaints history provided for the drivers involved in this issue. TfL noted with concern that one of the drivers accepted a caution for downloading and distributing an indecent image of a child and his PHV driver's licence had been revoked by TfL on 14 February 2019. TfL received confirmation of relevant information from Surrey Police on 4 February 2019 that enabled TfL to take formal action

against the driver. The driver had been allocated over 1,500 trips by ULL which created a significant public safety risk. Unsurprisingly, this caused genuine alarm to TfL.

- (n) TfL was concerned because the extent of this issue evolved over time, and ULL's approach to, and handling of this issue, did not give TfL confidence in: (a) the outcome of the latest review provided prior to the Decision; (b) the fact that all drivers involved had been identified and that the number of trips had been identified; and (c) that ULL had a clear grasp of all of the relevant issues.
- (o) By the time of the Decision, ULL had confirmed that over 14,000 trips were undertaken by drivers who were not authorised to do so.

164. This issue raises essentially five issues that are of importance as part of this appeal.

165. First, and at the most basic level, the breach is a serious matter in its own terms. TfL's primary concern throughout has been that services might have been provided by an individual with a serious criminal record or a medical issue and/or whose DVLA driving licence, or PHV driving licence had been revoked or refused. The risks to the public were serious and substantial. The number of journeys was, on any view, significant.

166. Ms Powers-Freeling describes how, when ULL met with TfL after the Decision, *'they [TfL] described themselves as 'shocked' by the number of trips (which we now know to have been 14,665 in total) carried out by individuals driving with fraudulently uploaded profile pictures'* [Powers-Freeling ¶65]. She then states that *'the Board was shocked too, but our context was different: we had seen first-hand what had been done to address these problems and prevent them in the future'*.

167. Second, as set out in paragraph 125 of the Decision Note, TfL considers that ULL did not originally regard this as a critical safety issue [EX1/4/156/2506]. Mr Heywood, quite rightly, states in his evidence *'I deeply regret that this happened'*

and that *'TfL was right to say that this behaviour raises important safety concerns'* **[Heywood ¶136]**.

168. Mr Heywood says that he is disappointed that ULL gave TfL the impression that it did not consider driver photo fraud to be safety-related **[Heywood ¶155]**. He says that ULL always understood this to be a safety question.
169. However, if this is accepted, it is of concern that this issue was not immediately raised with the ULL Board as a safety issue.
170. It is also noted that although the original 13 October 2018 complaint was classified as a 'potential safety concern – wrong driver' case and escalated **[Heywood ¶157]**, the driver was dismissed over two weeks later **[Heywood ¶159]**. Mr Heywood concedes that the Regulatory Operations team did not realise straight away that this was a breach of ULL's regulatory obligation to provide a passenger with an accurate photograph of their driver. As a result, the incident was not included in the breach register as quickly as it should have been and therefore was not included in the December 2018 Assurance Report **[Heywood ¶159]**. Mr Heywood describes this omission as an *'extremely unfortunate oversight'* and categorises this omission as a *'failure on our part to identify the regulatory breach aspect of this fraud'* **[Heywood ¶159]**.
171. Third, whether or not ULL properly characterised the issue, it was not adequately drawn to TfL's attention when the issue was first identified. Although a PHV 105 notification was provided to TfL for the driver dismissed in October 2018, at that time, the notification was vague as to the specific behavior that had occurred. As noted above, the issue was initially included in a May 2019 update to TfL, which covered a number of ULL's key activities over the last month. There was no covering email to highlight this particular issue to TfL, nor was there any attempt to discuss it with TfL.
172. This method of notification of an issue of such significance was not in accordance with the usual notification process to TfL that had been well established over time and since the grant of the licence by the Chief Magistrate in 2018 (for example, notifications have been sent directly to TPH's senior management about the

YouTube video demonstrating manipulations to the app, the premature acceptance of insurance issues, fraudulent insurance documents, as well as data issues, to name just a few). There were also other opportunities to raise this issue with TfL's senior management at the operator meetings which took place since the grant of the licence, but ULL failed to do so. It also failed to address the issue in the relevant Assurance Reports covering the period in which the issue arose.

173. Mr Heywood states that it was never his intention to downplay the issue by including the information in the monthly update report for TfL **[Heywood ¶168]**. However, given that the ULL Board had discussed these incidents as 'critical regulatory breaches' it seems remarkable that TPH's senior licensing team were not notified by way of separate notification dealing solely with this issue. I remain of the view that this demonstrates as a minimum, a lack of judgment on the part of ULL concerning the seriousness of safety-related breaches and the importance of notifying TfL of those matters. It also suggests that ULL did not fully appreciate the seriousness and significance of this issue at the time or the consequences for passenger safety (as discussed above).
174. Fourth, as set out in the Decision Note, ULL has undertaken a number of internal reviews with different time parameters and each time had found more drivers who had been involved in the driver photo fraud issue. Importantly, ULL told TfL on 22 August 2019 that ULL's audit was complete, and that ULL was confident that there were no more drivers involved. Following the September 2019 decision, ULL said it carried out a further audit, which reviewed cases from 7 March 2018 (this was the date that ULL said its exposure to vulnerability of driver photo fraud first began) and found another driver that had been involved in driver photo fraud. Then on 5 November 2019, ULL explained that it had found another driver photo fraud case when undertaking a review concerning complaints about the wrong driver undertaking the trip. TfL recognises that the fraud involved activity by sophisticated criminals. However, ULL's latest letters on this issue were provided to TfL on 2 April 2020 **[EX1/4/193]** and 20 July 2020 **[HC1/3/66]**, nearly 18 months after the first incident came to ULL's attention.



175. Even as recently as 20 July 2020, and shortly prior to finalising this statement, ULL sent notification of another driver who had been identified as being involved in the driver photo fraud issue [HC1/3/73]. The driver had been dismissed by ULL on 18 December 2018 for document fraud. ULL explains that during the MPS's investigation into the document fraud concerning the driver, the MPS confirmed they had reason to suspect the driver was involved in account sharing. ULL said that it subsequently reviewed the driver's account and noted that another driver dismissed for driver photo fraud was uploaded onto the driver in question's account on 6 September 2018 and remained there until 31 October 2018. During this period, 123 trips were carried out.
176. ULL's explanation for not identifying the driver as also being involved in the photo fraud issue was essentially manual error by those members of staff who were undertaking an audit of the driver documents. ULL said that *'as with any manual review, it is impossible to ensure 100% accuracy but particularly when the review is looking for similarities and differences between images by comparing the profile picture against other photographs on ID documents that may be low quality, small, and may have - legitimately - been taken several years apart'*. Having considered the relevant images myself, my personal view is that the differences between them are obvious. As a result, I consider this explanation is not satisfactory.
177. The incremental nature of the information provided to TfL does not reassure TfL that ULL's review of the matter (as well as the systems themselves) are reliable and robust. This further recent case, and ULL's comments that manual reviews cannot be 100% accurate, does not give me sufficient confidence that ULL has now identified all of the drivers who have been involved in this matter. Although this driver identified in ULL's letter dated 20 July 2020 had been dismissed by ULL in December 2018 and is no longer licensed by TfL (as the driver's licence expired), I am concerned that the manual review may have missed other drivers involved in this fraud who continue to work for ULL and take thousands of trips, despite their prior fraudulent activity. I note that ULL seeks to reassure TfL that it is confident that all TfL-licensed drivers with active accounts have accurate

profile photographs. However, for the reasons set out above, I do not share the same confidence.

178. Furthermore, it is difficult for TfL to have confidence in the information provided by ULL in this piecemeal fashion. ULL described the two root causes of this fraudulent activity in its letters dated 12 September 2019 [EX1/4/126] and 23 October 2019 [EX1/4/137] to TfL. TfL relied on this information to inform its licensing decision in November 2019. As stated in ULL's letter dated 2 April 2020 [EX1/4/193] the letters dated 12 September 2019 and 23 October 2019 summarised the root causes as: (a) a vulnerability arising as the Carbon version of the Uber app was configured to restrict profile photo uploading based on drivers' GPS location which could be exploited by drivers and (b) a failure by Uber to apply a technical prevention measure to the Alloy version of the app (a version predating Carbon) that was needed to stop TfL-licensed drivers using the Alloy version from being able to upload a new photo.
179. However, ULL's letter dated 2 April 2020 states that *'it is now clear that all cases of driver ID fraud, on both the Carbon and Alloy versions of the app, were in fact the result of the restrictions on profile photo uploading being based on drivers' GPS location, as described in (a) above'* [EX1/4/193]. The letter expressly concedes that *'our understanding of the root cause has updated'*.
180. Mr Heywood's statement concedes there was a missed opportunity early on to identify the extent of the driver photo fraud issue. The initial audit after the first incident in October 2018 was restricted to a specific timeframe and missed 13 cases of drivers who had swapped their profile pictures due to an error in the way that the audit data was pulled together [Heywood ¶178]. I take from Mr Heywood's statement – though he does not say so in terms – that ULL agrees that this failure was regrettable.
181. ULL's letter dated 2 April 2020 also stated that *'our profile photo audits collectively covered all drivers who were active on either version of the app at any point from 7 March 2018 to 14 October 2019. However, theoretically, some drivers who could have exploited the Alloy vulnerability between 21 March 2017 and 7 March 2018, but then were not active on the app after 8 March 2018, would*

*not have had their profile photo audited* [EX1/4/193/3151]. The letter then confirms that ULL has since checked all of those driver accounts for any evidence of similar photo fraud and found none.

182. This is further evidence of ULL's incremental approach to investigating the serious issue of driver photo fraud. It is remarkable that even by April 2020, TfL was being informed of further audits being undertaken of drivers between March 2017 and March 2018. My personal view is that it is difficult to have confidence in the assurances made by ULL given the fragmented nature of its investigations on such an important and significant issue, although I acknowledge that ULL has been transparent in its handling of these cases as its investigations have matured.
183. I note Mr Heywood refers to TfL carrying out its 'own annual audit of driver documents' on 10-12 July 2019 during which TfL checked various documents related to London drivers and vehicles [Heywood ¶182]. The 'audit' identified no errors. This should be referred to as a compliance inspection, rather than an 'audit', and I refer to paragraphs 65 - 72 of the Decision Note for a full explanation of the compliance inspection process [EX1/4/156/2486-2487]. It bears repeating that any sample check undertaken during a compliance inspection is small and not capable of uncovering all possible issues. The sample check was undertaken as part of an annual compliance inspection, not for the purposes of investigating the specific driver photo fraud issue.
184. On this issue, I note that in a City A.M. article on 16 July 2020, entitled 'Exclusive: Uber's UK boss 'optimistic' it will win back London licence', Mr Heywood is quoted as saying, with regard to the driver photo fraud issue: "*At the time we had informed TfL about this well in advance and it had been fixed and addressed by the time the decision was made which is why we disagreed [with the decision]*" [HC1/2/23]. I am aware that some media reports may misinterpret facts and incorrectly quote or take such quotes out of context. However, as this appears to be a direct quote from Mr Heywood, I am concerned that it is inconsistent with his letter of 2 April 2020 in which he concedes that ULL's understanding of the root cause has been updated since the Decision. TfL did not have confidence it

could rely upon the explanations given at the time of the Decision, and clearly, it was right to hold that view.

185. I remain extremely concerned about the time taken to fully investigate the root cause of this issue and the piecemeal approach to providing updated information to TfL and remain of the view that little confidence can be placed in the latest update as being the final root cause, that all drivers have been identified or that ULL has a clear grasp of all of the relevant issues.
186. Fifth, the fact that ULL's systems had been exploited in this manner, raised questions for TfL concerning the vulnerability and security of ULL's systems in the future.
187. Mr Heywood concedes, as he must, that driver photo fraud '*could not have happened without vulnerabilities in our controls*' [Heywood ¶188]. Although Mr Heywood describes at length the vulnerabilities facing all app-based systems, it is still a matter of serious concern to TfL that fraudsters were able to manipulate ULL's systems with comparative ease and avoid detection for a significant period of time.
188. TfL took into account in its Decision Note a series of operational changes made by ULL to ensure that its systems are better protected and, in particular, to bolster its controls against drivers using their own photograph [Heywood ¶189]. The further expansion of ULL's Real-Time ID checking for the driver app is considered in paragraphs 335-346 below.
189. Ultimately, the vulnerability in ULL's systems and the seriousness of the driver photo fraud issue (together with several other system vulnerabilities as summarised at paragraph 61 above) prompted TfL to instruct Cognizant in October 2019 to analyse ULL's change and release management processes. I discuss this further, and ULL's revised approach to its change and release management processes, below.
190. There remain concerns for TfL in relation to this issue because they were serious breaches. Mr Heywood states that he is unaware of whether any of the drivers

involved in this issue have been prosecuted [Heywood ¶153]. In November 2019 TfL made contact with the MPS with regard to reporting these offences and remains available to assist the MPS with their enquiries. I understand that ULL continues to provide assistance to the MPS. The appropriateness, timeliness and adequacy of ULL's response to those breaches, as described above together with the likelihood of this kind of incident recurring and the reliability of ULL's systems and processes more generally, in the light of their historic performance and the evidence concerning the recent changes that have been made to those systems, remain of concern to me.

**(viii) Other regulatory breaches**

191. This issue of 'other regulatory breaches' is addressed in paragraphs 167 to 198 of the Decision Note [EX1/4/156/2518-2525]. It is also referred to in Mr Heywood's statement [Heywood ¶¶ 203-237].
192. As set out in paragraph 167 of the Decision Note [EX1/4/156/2518], ULL's Assurance Reports include details of regulatory breaches that have occurred in each relevant period, including the root cause and ULL's action plan to ensure that they do not happen again. Therefore, Mr Heywood makes detailed reference to the Assurance Reports provided by ULL to TfL in his statement.
193. The 1998 Act and associated Regulations create a number of offences for the private hire industry. Regulatory breaches by any private hire operator raise safety concerns for TfL. For example, as noted in paragraph 182 of the Decision Note [EX1/4/156/2523-2524], a failure on ULL's part to dismiss drivers within the relevant time frame or to notify that decision to TfL, raises real safety concerns for TfL. It is imperative that drivers involved in such incidents are prevented from providing PHV services as soon as possible.
194. TfL's Decision considered the Assurance Reports provided by ULL in December 2018 [EX1/4/88], June 2019 [EX1/4/112] and October 2019 [EX1/4/139]. Since the Decision, ULL has provided two further Assurance Reports in February 2020 [EX1/4/178] and May 2020 [HC1/2/20-21] which are considered, respectively, below.

195. TfL's Decision Note (paragraphs 167-179) recorded the volume of regulatory breaches that were reported in ULL's December 2018, June 2019 and October 2019 Assurance Reports **[EX1/4/156/2518-2523]**:

(i) December 2018 report recorded 152 regulatory breaches - a further 23 cases of fraudulent documentation for the relevant period were not included in the December 2018 report.

(ii) June 2019 report recorded 50 regulatory breaches and included details of the aforementioned 23 cases of fraudulent documentation. TfL's review of its own records found 4 breaches that occurred within the relevant period of the June 2019 report which were not included in that report.

(iii) October 2019 report identified 24 regulatory breaches that occurred during the relevant period and 27 regulatory breaches that occurred prior to 1 June 2019 but were not included in the June 2019 Assurance Report. Following a review by TfL of the raw data underpinning the June 2019 Assurance Report, TfL identified a further four breaches of condition 12b (the 48 hour reporting requirement) that were not included among the aforementioned 27 incidents which occurred prior to 1 June 2019. TfL also identified one additional breach that was included in the October 2019 report for which TfL had not received any prior notification. Further enquiries on 21 November 2019 revealed that there were a further seven notifications that ULL had failed to send to TfL, although this was later determined to be due to an incorrect email address being provided by TfL to ULL.

196. As noted above, TfL undertakes its own analysis of ULL's data in its Assurance Reports to ensure it is accurate. It is important to note that a relatively small number of breaches can still mean that thousands of trips have been affected which impacts upon passenger safety.

197. I am concerned that the Assurance Reports for December 2018, June 2019 and October 2019 did not identify a considerable number of breaches that occurred in that period. As noted in the Decision Note, the inconsistency in reporting of the number of regulatory breaches between each of the Assurance Reports made it

difficult for TfL to be confident of the accuracy of the data being shared. It is also important that TfL itself has identified additional breaches that were not included in the Assurance Reports and TfL has considered it necessary to request the raw data from ULL underpinning some of the figures in the Assurance Reports to verify its accuracy.

198. The continued breaches of condition 12b of ULL's licence concerned me. Initially, there were instances where ULL's notification was significantly later than required in the condition 12b, although I recognise this has improved in more recent Assurance Reports. This condition was agreed by the Chief Magistrate in June 2018 to address the issue of ULL not reporting serious matters to the MPS and TfL in a timely manner. Condition 12 provides that ULL shall, within 48 hours of receiving a safety related complaint concerning a ULL driver: (a) assess whether it is necessary to remove or suspend that driver account pending further inquiries; and (b) notify any such decision to remove or suspend the driver to the licensing authority, including specifying the details of the driver and the allegation. This condition is particularly important to ensure the safety of passengers.
199. I note Mr Heywood's statement refers to the 'absence of industry guidance' on what is considered a safety-related complaint, the standards TfL applies when deciding whether to revoke a PHV licence or the standards other operators apply when they decide to waitlist a driver **[Heywood ¶213]**. Mr Heywood also states that ULL has asked TfL to meet to discuss the way in which ULL categorises complaints and that TfL has not yet taken up this suggestion. TfL published, on 12 September 2018, guidance for PHV operators on reporting of alleged or suspected criminal conduct **[HC1/2/7]**. However, to date, we have not considered it is necessary to prescribe for individual operators how they categorise safety-related complaints and operate their complaints process, although we are keeping this under review. In response to the suggestion that TfL publishes the standards it applies when deciding to revoke a PHV licence, this is not appropriate. TfL considers each case concerning the possible revocation of a PHV licence on its merits and in relation to the specific circumstances.

200. Mr Heywood's statement sets out TfL's five concerns, as recorded in the 'other regulatory breaches' section of the Decision Note. I address each of these areas in turn below.
201. First, as noted above, the Decision Note recorded TfL's concern at the volume of breaches of the regulatory framework. Mr Heywood states that the bulk of breaches are of condition 12 and that the December 2018 Assurance Report recorded 47 breaches of this condition **[Heywood ¶217]**. As noted in Mr Heywood's statement, ULL has introduced new systems in order to ensure that safety complaints are properly escalated and in order to reduce the likelihood of a manual error **[Heywood ¶219]**.
202. Mr Heywood refers to the fact that there were nine breaches in the February 2020 Assurance Report. I deal with the February Assurance Report below. Nonetheless, it is still of concern that there continues to be such breaches given the critical importance of the requirement in the first place which is designed to protect public safety and therefore the importance of timely notification to TfL under condition 12b.
203. I recognise that ULL has made progress in respect of the other categories of breaches set out in the Decision Note. ULL has not breached its obligation to notify TfL within 14 days of deactivating a driver's account since 3 January 2019. The February 2020 Assurance process also identified reductions in the other two categories of breach (incidents where either a driver has not had the appropriate documentation in place and has been able to conduct trips through the app or ULL has not held the required documentation for the required period).
204. Second, TfL's Decision Note also expressed concern regarding discrepancies in the accuracy of the data. The timestamp data on driver suspension notices was inaccurate, and as noted above, TfL also identified four further breaches of condition 12 when reviewing the raw data behind the June 2019 Assurance Report. Mr Heywood recognises that "*accuracy in the underlying data is crucial*" **[Heywood ¶229]**. He explains that ULL recently commissioned data consultants, Crowe UK Ltd ('**Crowe UK**'), to provide further assurance on the completeness of the breach data. Crowe UK's findings appear to have provided ULL with



confidence that its breach data reported to TfL in the February 2020 Assurance Report is accurate and complete [Heywood ¶232]. However, it should be a given that breach data reported to TfL is accurate and comprehensive in the first place. In any event, as detailed below, TfL has identified discrepancies and inaccuracies in the data in ULL's February 2020 Assurance Report which calls into question ULL's confidence in Crowe UK's analysis.

205. Third, the Decision Note stated that, following a detailed review of ULL's Assurance Report for October 2019, TfL identified that notification of suspension by ULL of one of its drivers had not been received by TfL. ULL's operational team later confirmed that the suspension notification had been sent to TfL on 28 August 2019 along with the suspension notifications for six other TfL licensed drivers [EX1/4/150].
206. Following further correspondence between the parties it became clear that these notifications had been sent to an incorrect email address, [REDACTED]@tfl.gov.uk' (note the missing 'p') provided by TfL to ULL, rather than [REDACTED]@tfl.gov.uk'. On 23 December 2019, TfL sent an email to ULL confirming the correct email address for ULL to use [EX1/4/164]. No data regarding these drivers was compromised as a result of this incorrect email address.
207. Fourth, the Decision Notice identified that there were certain breaches that were not recorded in the subsequent Assurance Report. I address this further below.
208. Fifth, TfL's overriding concern remains that there have been a significant number of regulatory breaches in the period since the Chief Magistrate granted ULL a licence in June 2018. While there has been an overall decrease in the number of breaches, there has never been a period of complete compliance by ULL since the Chief Magistrate's decision. Safety is of paramount importance and any breach of a regulatory obligation could put a passenger at risk. I am concerned that this is sometimes glossed over by ULL who focus on the fact that the number of regulatory breaches, in percentage terms, is small when compared to the total number of journeys undertaken by its drivers. However, a single breach may in fact be extremely serious in terms of risks to passenger safety. As has been

demonstrated with the driver photo fraud issue, a small number of breaches can equate to a very significant number of passenger trips where the safety of passengers has been compromised.

**(xi) Assurance Reports**

209. This issue is addressed in the Decision Note at paragraphs 190–198 **[EX1/4/156/2525-2526]** and in Mr Heywood’s statement **[Heywood ¶¶238-367]**.
210. The Decision Note identified a number of concerns that TfL had about the comprehensiveness and reliability of ULL’s Assurance Reports.
211. Mr Heywood accepts that the December 2018 and June 2019 Assurance Reports ‘*were difficult to digest and did not present the findings of the Assurance Review Procedure in an efficient way*’ **[Heywood ¶240.2]**. Ms Powers Freeling concedes that ‘*it has taken some time to align the purpose and focus of the Reports with TfL’s preferences*’ **[Powers-Freeling ¶54]**. In short, the December 2018 and June 2019 reports were presented in a manner that was difficult to digest and comprehend.
212. TfL’s first concern was that a number of extremely serious breaches relating to the driver photo fraud issue (discussed above) were included in an appendix to the June 2019 Assurance Report. The presentation of this critical issue in an appendix to the report caused real concern to TfL, because it indicated that ULL either did not appreciate the seriousness of the breaches or was seeking to minimise their significance.
213. Mr Heywood explains in his evidence that the Board had considered it was clearer to set out the breaches that occurred in a given period in a separate part of the report from those that occurred during the period itself **[Heywood ¶261]**. However, TfL does not consider that placing such critical information in an appendix of a lengthy and dense 268 page document demonstrates that ULL properly understood the significance of the breaches or the function of the Assurance Report itself.

214. I accept that the production of these Assurance Reports is a complex task for ULL which has required extensive resource on their part, and that ULL has adapted the structure of the Assurance Reports over time. This reflects ULL's willingness to respond to comments from TfL and adapt its practices. ULL has sought to improve the user-friendliness of the Assurance Reports at each iteration.
215. TfL's second issue concerned the fact that the June and October 2019 Assurance Reports provided information concerning breaches in the period covered by the prior report. Mr Heywood acknowledged this in his statement: *'I recognise TfL's concern regarding instances of retrospective identification and reporting of breaches in the Assurance Reports'* [Heywood ¶265]. The Decision Note fairly accepted that it is the nature of this kind of process that some breaches will only be identified after the event. However, it was still very concerning that, as acknowledged in Mr Heywood's statement, the February 2020 Assurance Report still identified 61 breaches that occurred outside the reporting period (further detail provided below) [Heywood ¶265].
216. Some of the reasons ULL has given for retrospective identification of breaches include that certain types of breaches are difficult to spot at the time that they originally occur and that investigations into potential breaches can often span two reporting periods. ULL has adapted its practice somewhat in this respect. By way of example, further to correspondence with TfL, ULL now reports a breach the moment a document has been confirmed as fraudulent rather than waiting for investigations to conclude in a latter period. This is an important and valuable change of approach, although arguably should have always been in place.
217. It is still of concern to TfL that such a significant proportion of the breaches in question are only identified in the period after they have occurred. As Mr Heywood himself recognises in his statement, one cause of that may be human error in the collation of breach data for the Assurance Report [Heywood ¶264.4]. TfL notes that ULL has commissioned Crowe UK to further validate the data contained in the Assurance Reports which should, provide some confidence in the accuracy of ULL's data provided to TfL, although I have yet to see this and

this confidence is somewhat misplaced given the inconsistencies and inaccuracies TfL identified in the February 2020 Assurance Report (see below).

### **February 2020 Assurance Report**

218. Given the concerns raised in its Decision, TfL required ULL to provide Assurance Reports every three months. On 28 February 2020, ULL provided TfL with an Assurance Report covering the period between 1 October 2019 to 31 January 2020 **[EX1/4/178]**.
219. This identified 18 breaches for the reporting period and, as mentioned in paragraph 215, an additional 61 breaches in relation to previous reporting periods.
220. TfL's analysis of the February 2020 Assurance Report identified omissions and discrepancies in the data provided. On 5 June 2020, TfL sent a letter to ULL, outlining its concerns about these data anomalies including an appendix and an annotated version of the spreadsheet of data provided by ULL with its February 2020 Assurance Report **[HC1/3/51-53]**. This letter was delayed due to the ongoing impacts of the COVID-19 pandemic on TfL's resources. Furthermore, it takes significant time and resource for TfL to analyse ULL's data and to undertake the necessary comparative exercise with its own data.
221. ULL sent a response to TfL's letter on 22 June 2020 with various appendices and expressed regret that TfL's review identified a number of inconsistencies and inaccuracies in the data which required TfL to seek further explanation **[HC1/3/58-65]**. The letter said that ULL considered all of the 'potential breach' cases flagged by TfL and confirmed that in ULL's view none of these constituted a breach. However, ULL stated that this exercise highlighted a number of areas where the accuracy and clarity of the information provided to TfL could be improved, as well as some areas where ULL's policies should be changed. Indeed, we note that the May Assurance Report identifies nine additional breaches for previous reporting periods.

222. One area of improvement flagged by ULL was its policy around the deactivation of drivers who have provided ULL with fraudulent documents. ULL's approach from late 2019 was not to deactivate a suspended driver's account until ULL had completed its investigation and reported the driver to the police with a witness statement. However, this caused lengthy delays, particularly in reporting to TfL. Therefore, ULL stated it had approved a revised policy for handling document fraud cases and had split out the two processes of: (i) deactivating the driver and issuing a PHV105 notification to TfL and (ii) preparing a witness statement for the police report.
223. ULL stated that other discrepancies identified by TfL related to inconsistencies (with times, dates or trip counts) between the regular notifications ULL sent to TfL and the data included in the Assurance Report. Some of these have been caused by human error.
224. ULL also stated that in light of TfL's comments on the February 2020 Assurance Report, ULL had reviewed the May 2020 Assurance Report (see below) previously provided to TfL and identified a small number of the same inconsistencies as those identified by TfL in the February 2020 Assurance Report. A revised version of the appendix to the May 2020 Assurance Report was therefore included **[HC1/3/65]**.
225. On 28 June 2020, Mr Heywood sent an email to TfL clarifying some of the wording in ULL's 22 June 2020 letter **[HC1/3/67]**. The 22 June 2020 letter stated that none of the discrepancies resulted in ULL reporting any additional breaches or breach-impacted trips. Mr Heywood confirmed that in relation to the breach-impacted trips, this was not correct and the wording in the 22 June letter had been included in error. He said that Appendix 1 included the correct data and identified 102 breach-impacted trips that had incorrectly not been included in the February 2020 Assurance Report due to errors in the way that the data in the report was compiled.
226. On 8 July 2020, TfL sent a further letter to ULL **[HC1/3/69]**. In this letter, TfL noted that ULL had introduced measures to mitigate against the recurrence of such data discrepancies in the future. However, TfL highlighted it was still of

concern that such a large volume of discrepancies went unnoticed by ULL during the process of compiling and reviewing the reports. It was concerning that the data analysis undertaken by Crowe UK had failed to highlight these inconsistencies.

227. TfL also stated that it found the discrepancies relating to driver complaint histories to be an issue of particular concern as this was an ongoing issue raised on previous occasions, including the driver photo fraud correspondence. TfL reiterated that it is paramount that it is given all information regarding safety related complaints and it is not confident that ULL's current reporting system provides this on all occasions.
228. On 20 July 2020, ULL sent a letter which provided a response to TfL's letter dated 8 June 2020 [HC1/3/72]. The letter stated that ULL '*take any inconsistencies in quality of the data provided extremely seriously*'. The letter stated that in addition to the audit undertaken by Crowe UK on the February Assurance Report, Linklaters LLP ('**Linklaters**') was also engaged to verify the factual statements contained in the Assurance Report. ULL accepted that '*the verification exercise fell short of our (and TfL's) expectations on the accuracy of the trip and time-stamp data*'. ULL stated that it has received assurances that Crowe UK and Linklaters would enhance the level of quality assurance performed over this work.
229. In response to TfL's concerns about the discrepancies relating to driver complaint histories, the letter repeated the fact that ULL had made a number of changes to its systems and processes as detailed in its letter dated 25 October 2019 and 22 June 2020.
230. TfL therefore retains a number of concerns about the accuracy and completeness of the data provided in ULL's Assurance Reports. It is also fair to say that TfL has found it has to invest a significant amount of time and resources in reviewing ULL's Assurance Reports. Candidly, TfL would prefer to be in a position where it does not feel that it has to check up on the material provided by interrogating the data. It would prefer to have confidence and rely on the accuracy of the contents of the report.

231. This is particularly disappointing given Ms Powers-Freeling's view in her statement that *'the primary purpose of the Assurance Reports, however, is to provide information and assurance to TfL'* [Powers-Freeling ¶54]. Although I consider the condition for ULL to produce an Assurance Report is still important, it is difficult to say that TfL has confidence in the Assurance Report process given that the February 2020 Assurance Report still contained a number of errors. Given the recurring errors identified by TfL in ULL's Assurance Reports, I do not share Mr Heywood's confidence, as stated in his statement, that *'the Assurance Review Procedure is a robust and rigorous review that demonstrates the seriousness with which we consider adhering to every one of our regulatory obligations'* [Heywood ¶67].

### **May 2020 Assurance Report**

232. On 29 May 2020, ULL sent TfL the May 2020 Assurance Report covering the period from 1 February – 30 April 2020 [HC1/2/20-21]. As noted above, a revised version of the appendix to the Report was provided with ULL's letter dated 22 June 2020 following amendments made in light of inconsistencies and errors identified by TfL with the February 2020 Assurance Report [HC1/3/65].

233. This identified 4 breaches for the reporting period and an additional 9 breaches in relation to previous reporting periods.

234. TfL's letter dated 8 July 2020 also provided a response to the May 2020 Assurance Report [HC1/3/69]. It is important to note that the period covered for this Assurance Report spanned a 6-week period of lockdown within London in response to the COVID-19 pandemic. Therefore, the number of regulatory breaches notified in the May 2020 Assurance Report was likely to be improved given the significant decrease in numbers of PHV trips that is generally being reported by the industry.

235. TfL raised concerns in its letter dated 8 July 2020 that there were still instances where fraudulent certificates were managing to bypass the additional checks introduced as part of ULL's 'four eyes' review process. The May 2020 Assurance Report provided details of three cases related to fraudulent insurance. TfL raised

concerns that, in one of these cases, a driver was able to provide seven different insurance certificates that were accepted by ULL, enabling 545 trips to be taken without valid insurance. These fraudulent certificates dated back to 21 June 2019. Although TfL noted that there was some degree of sophistication involved in this fraud, the number of fraudulent certificates that were accepted was concerning as was the high number of trips taken without insurance.

236. TfL noted in its letter dated 8 July 2020 that whilst it understood that all ULL staff are retrained when a certain type of fraud is identified, it would be helpful to understand whether any other mitigations have been introduced to prevent this from occurring again.
237. Further insurance issues were identified with regard to breach reference 687 **[HC1/2/21]** where a driver was allowed to take journeys without providing a full set of documents. TfL recognised that feedback had been provided to the ULL staff who accepted these documents despite the absence of a driver schedule. However, it was still of significant concern that the driver was accepted on the platform and allocated trips. TfL sought information of any mitigatory measures ULL had introduced to prevent such errors occurring in the future. TfL also expressed concern that the May 2020 Assurance Report had referred to 13 drivers as a 'regulatory concern' which I consider in detail below in paragraphs 353-364 in the section on Instadoc.
238. ULL's letter dated 20 July 2020 **[HC1/3/72]** included a response to TfL's queries related to the May 2020 Assurance Report as set out in TfL's letter dated 8 July 2020.
239. ULL provided a brief response to TfL's concerns regarding the driver who had provided seven different insurance certificates. I remain concerned that the fraudulent certificates identified dated back as far as 21 June 2019. In terms of mitigations to prevent such fraud occurring again, ULL stated that all its agents are comprehensively trained on fraud awareness and provided with case by case learnings when new fraud detection methods are discovered. ULL also relied upon the continued expansion of Instadoc to help combat the submission of fraudulent documents.



240. In summary, I consider that ULL has engaged collaboratively to improve its Assurance Reports since the first one provided in December 2018 and has responded positively to the comments given and been willing to make improvements. However, TfL devotes significant time and resource to verify the data provided in ULL's Assurance Reports for consistency and accuracy. It is concerning that ULL is still unable to provide comprehensive and accurate data as part of its Assurance Reports over two years and five Assurance Report cycles since the condition was first introduced to ULL's licence following the grant of the short licence in 2018.
241. TfL accepts and recognises that the overall trajectory, in terms of breaches, is downwards but it is difficult to determine how much reliance it places on the May 2020 Assurance Report cycle in terms of overall numbers due to the COVID-19 pandemic. However, at this time, particularly given the number of inaccuracies identified above in the February 2020 Assurance Report, there is still more to be done to ensure these Assurance Reports are comprehensive and correct.
242. ULL's next Assurance Report is due on 31 August 2020 covering the period of 1 May – 31 July 2020. I expect the ongoing effects of the COVID-19 pandemic will continue to have a material impact on the number of regulatory breaches so we will have to consider the contents of the report bearing in mind the extraordinary circumstances.

**(xii) Cognizant ITSM Assessment, KPMG report and PA Consulting report**

243. As set out at paragraphs 199 to 239 of the Decision Note **[EX1/4/156/2527-2543]**, in October 2019, TfL instructed Cognizant to carry out a maturity assessment and cyber security review of ULL's systems. TfL commissioned that assessment because it wished to understand better the controls and processes that ULL had in place and to obtain assurance that the various issues identified in the Decision Note would not recur.
244. The very fact that TfL was required to instruct a third party with specialist expertise to investigate ULL's processes demonstrates the level of concern on TfL's part. As noted above in paragraph 61, the driver photo fraud issue was one

of a number of issues that had arisen since the Chief Magistrate granted a licence to ULL in June 2018, which raised doubts for TfL concerning the overall vulnerability of ULL's systems to fraudulent exploitation or manipulation.

245. I set out below the nature of the Cognizant report, which TfL obtained in relation to ULL's systems before taking the decision not to renew ULL's licence. I also set out the conclusions of the KPMG Report **[EX1/4/190]** which was commissioned by ULL following changes it made to its ITSM processes, and the PA Report which was commissioned by TfL, in order to assist the Court on this appeal **[HC1/2/24]**.
246. As noted in the Decision Note, Cognizant's Security Maturity Assessment **[HC1/2/13]** concluded that ULL was at or above the level of performance and reliability that would be expected of a company in its position. This provided comfort to TfL in that area. Although there were some weaknesses identified, the processes, overall, were at Level 3 or above and therefore treated as being managed. That was not the case in relation to the ITSM report **[EX1/4/147]**, which did not provide TfL with the same level of confidence.
247. In short, it assessed ULL's Change Management systems at Level 2 (whereas it expected a global service provider like ULL to be at Level 3). It also assessed ULL's Release Management (the planning, design, build configuration and testing of applications) at Level 2. It identified a number of major gaps that gave rise to significant consequences such that TfL's concerns were focused on these processes. Cognizant's conclusions are summarised in more detail at paragraphs 213 to 220 of the Decision Note **[EX1/4/156/2534-2537]**.
248. As set out above, the ITSM Report was obtained during the two-month licence period between September and November 2019. TfL offered ULL an opportunity to respond to the report and highlight any inaccurate information or make any other observations. ULL took that opportunity and raised a number of concerns, but nothing that ULL said caused Cognizant to change its conclusions **[HC1/3/37-39]**.

249. Mr Heywood accepts many of the conclusions of the ITSM Report in his statement: *'I accepted at the time of the Decision Letter that our systems and processes could be strengthened in various ways and the Cognizant ITSM Report had identified areas for us to focus on'*. [Heywood ¶281]. He and the Board *'agreed that Cognizant had identified certain areas for improvement, such as testing, where we needed to introduce or accelerate further process improvements'* [Heywood ¶285]. Ms Powers-Freeling also accepts, in the context of the driver photo fraud issue that *'it was our change and release management processes that we really needed to address'* [Powers-Freeling ¶91].
250. Ms Powers-Freeling also notes that the ULL Board is aware that *'specific issues around our IT testing and the robustness of the processes we have to ensure that the launch of a new product does not adversely affect our ability to comply with our regulations in London were at the root of concerns leading to our licence not being renewed'* [Powers-Freeling ¶21].
251. In December 2019, following TfL's Decision, Mr Heywood states that it was explained to the ULL Board that ULL would be commencing a programme of work that included 17 interventions to improve its change and release management processes. ULL also appointed KPMG as an independent expert to assess its systems and processes and its level of maturity once those changes were implemented [Heywood ¶298]. I consider that the programme of change commenced by ULL may not have been put in place had it not been for TfL's Decision and the concerns TfL raised about ULL's ITSM maturity level.
252. ULL sent a letter to TfL on 24 January 2020 about its new processes [EX1/4/170]. It said that there are two key principles that underpin the process for releasing new products or changing existing ones. First, that end-to-end scrutiny is required of all proposed product releases and changes for any potential impact on safety and compliance. This scrutiny is applied from conception and product design through to launch and post-launch. Secondly, that while the ULL Board is ultimately responsible for compliance with ULL's regulatory obligations in

London, the LOMC has oversight of, and is accountable for, all aspects of this process.

253. On 1 April 2020, ULL provided TfL with a copy of KPMG's report entitled 'Change and Release Management IT Service Management Process Review' [EX1/4/190]. KPMG's review focused on change and release management as these were the areas where Cognizant had scored ULL at an overall maturity Level of 2 [Heywood ¶301]. In Mr Heywood's letter to TfL dated 1 April 2020, which accompanied the KPMG report, he explained that KPMG were asked to undertake an independent review, which was a new assessment, carried out at a different point in time, once the improvements ULL had put in place had come into effect, and he confirmed that the assessment reflected the maturity of ULL's processes as at 27 March 2020.
254. KPMG scored ULL at an overall Level 3 for both change management and release management. The KPMG Report identified four out of ten "assessment domains" (I understand this to mean areas within the categories of Change and Release Management processes that were reviewed) in which it scored ULL at Level 4, with the remaining six scoring at Level 3 [Heywood ¶305].
255. KPMG also assessed the impact of ULL's Change and Release Management processes on ULL's ability to comply with its regulatory obligations. Therefore, KPMG's review included an analysis of previous regulatory breaches covering a period of 20 months from June 2018 to January 2020 [Heywood ¶307]. KPMG's breach analysis found that during the 20-month period, 22 breaches arose as a result of deficiencies in change management and release management. Of these 22 breaches, 21 related to the driver photo fraud issue. The other was caused by a database outage that arose from technology changes and impacted ULL's ability to report on passenger complaints within the prescribed timeframe. KPMG concluded that the controls put in place by ULL '*eliminate the particular vulnerabilities*' that gave rise to the 22 Change and Release Management related breaches [Heywood ¶308].

256. Mr Heywood's statement provides a detailed explanation of the improvements ULL has made to its Change and Release Management processes which are the subject of KPMG's report **[Heywood ¶312-351]**.
257. I note that the KPMG report does not directly disagree with the findings in Cognizant's ITSM Report. Nor does it suggest that the scoring methodology or framework adopted by Cognizant was flawed or inadequate. KPMG's conclusion appears to be, in summary, that ULL has changed its systems and that they now warrant a better score than that assessed by Cognizant.
258. On 28 May 2020, ULL sent a letter to TfL stating that it intended to instruct KPMG to produce a follow-up report to provide further assurance that the improvements ULL had made had bedded in successfully **[HC1/3/49]**. The letter proposed that ULL and TfL jointly commission KPMG to undertake the up-to-date assessment of the maturity of its change and release management processes.
259. On 8 June 2020, TfL replied, stating that its preference was to commission an independent third party to complete the follow-up assessment **[HC1/3/54]**. TfL considered that having two independent assessments would provide the most assistance and confidence to the Court in its assessment of ULL's systems.
260. On 19 June 2020, ULL provided TfL with a copy of KPMG's addendum report **[HC1/2/22]**. KPMG's supplementary review was conducted over four weeks across May and June 2020 and assessed whether ULL's Change and Release Management processes and interventions had been sustained and whether the ITIL maturity of those processes had remained the same. Based on the additional evidence reviewed, KPMG confirmed that the ITIL maturity level had been sustained.
261. TfL began discussing with Cognizant in February 2020 whether it could carry out a further round of assessments of ULL's systems following the changes ULL had made. However, for various reasons, it was not possible to commission Cognizant to undertake a further review and to do so within the timeframes proposed.

262. TfL therefore appointed PA in June 2020 to carry out a review of ULL's systems.

263. The primary focus of PA's review, as set out in the terms of reference **[HC1/2/24]**, was to determine whether the changes implemented by ULL addressed the findings in the ITSM Report, i.e. that certain aspects of ULL's ITSM were below the standards that would be expected of a company in ULL's position. It was focused on the ITSM Report because although the Security Review report had identified weaknesses, the ITSM Report highlighted major gaps that gave rise to significant vulnerabilities.

264. TfL instructed PA to undertake the following key tasks:

- Evaluate the changes made to ULL's framework and processes since the Cognizant review;
- Review any changes and updates that have been made to ULL's documentation, processes, artefacts, policies, standards, procedures, diagrams and configurations since the Cognizant review;
- If possible in the time available, and under the current constraints, interview key business and IT personnel to understand the changes and updates to the processes and current programme components implemented since the Cognizant review;
- Assess the maturity of ULL's ITSM processes and benchmark those systems against the maturity definitions set out in Appendix B to the Terms of Reference; and
- Produce a maturity assessment report that builds on and updates the Cognizant report, taking into consideration and reviewing the processes followed by ULL during the development and implementation of any new products.

265. In conducting the assessment, PA was instructed to:

- Review and document evidence of any changes implemented by ULL that have been implemented since the date of the Cognizant review;
- Confirm whether these changes: (i) address the inadequacies and shortfalls identified in the Cognizant review; (ii) raise any new or further concerns, inadequacies and shortfalls about which TfL should be aware (e.g. have they caused weaknesses elsewhere that should be addressed); and (iii) were introduced and implemented in a manner that is consistent with PA's assessment of ULL's ITSM performance;
- Seek practical examples of ULL's systems in practice and reach its conclusions on the basis of those examples (where practical given the limitations imposed by the COVID-19 epidemic);
- Consider the findings in the KPMG report;
- Identify where, if at all, its view concerning ULL's maturity differ from those of KPMG; and
- Explain the reasons for any such difference.

266. PA was also instructed to confirm:

- Whether it has any concerns about the adequacy of ULL's ITSM and why; and
- Its assessment of the appropriate maturity score that should be assigned to ULL's systems and processes (in light of the changes ULL has made).

267. PA carried out its assessment remotely due to the restrictions in place caused by the COVID-19 pandemic. PA's independent review spanned four weeks in June 2020 and PA provided its final report to TfL on 16 July 2020 **[HC1/2/24]** in a format that could be shared with ULL. TfL shared a copy of the final report with ULL on the same day. On 20 July 2020, ULL confirmed that it did not have any comments on PA's report.

268. The assurance teams at PA worked with the ULL teams to understand the ITSM processes and governance controls. PA's activities included:

- (a) requesting direct access to previously cited and new evidence, thereby enabling an independent assessment of the source materials in relation to Change, Release, Incident and Problem Management;
- (b) interviews with key stakeholders across ULL, including the LOMC;
- (c) walkthroughs of the key processes and tools recently introduced by ULL to provide context and assurance in relation to the claimed improvements;
- (d) requesting and obtaining further evidential data covering the management and reporting of incident data across Uber's global systems; and
- (e) reviewing the evidence collated and evaluated by KPMG concerning ULL's Change and Release Management processes, including conducting deep dive with KPMG.

269. In summary, PA concluded that ULL is now demonstrating a maturity of 'Level 3 – Control' for both Change and Release Management processes.

270. PA's core conclusions in relation to Change and Release Management are set out on page 5 of its report **[HC1/2/24]** and are as follows:

- (a) ULL's Change and Release Management processes provide rigorous assurance of changes that impact ULL's operations. The LOMC provides appropriate oversight of the Change and Release Management processes. It reviews, prioritises and approves all releases for London, and also plays an active role in reviewing product designs to assess their possible impact on London.
- (b) The controls put in place by ULL are consistent with the standards that it would expect in a fast-paced, agile organisation. Processes are documented, readily available and training is given in how the processes should be followed. Changes to the global Uber systems that might affect



London are subject to specific processes that include detailed impact assessments prior to their release. ULL has recently implemented a new tool (ServiceNow) to support these approval processes.

- (c) Any changes assessed by product owners to have a potential regulatory impact on London operations are escalated to a dedicated team and managed through a rigorous assessment process.
- (d) On the basis of the evidence reviewed, all the major gaps identified by Cognizant in November 2019 have been addressed and further interventions and improvements have also been made in several areas. The processes in place ensure that the regulatory requirements associated with London operations are being met and the assessment of regulatory impact is now a specific gate in the overall design process followed within ULL. The LOMC provides oversight and an escalation route for final decisions on both the design and release of London impacting changes. The LOMC's role also includes granting final approval for all releases which impact ULL operations. Additionally, where any regulatory breaches have occurred, the assessment team have analysed these breaches and concluded that failings in Change and Release Management processes were not a contributing factor.

271. PA noted that the ITSM Report did not identify any major gaps relating to Incident and Problem Management processes, but there were some weaknesses in those areas that ULL has now addressed (page 18 [HC1/2/24]). The interventions to address these weaknesses were out of scope of the assessment undertaken by KPMG. PA carried out additional analysis of these interventions to assess whether they were, appropriate, effective, and did not introduce unintended or adverse consequences. PA concluded that ULL has established and operates robust processes governing Incident and Problem Management. ULL's London operations have an additional layer of governance (above and beyond that which applies in the wider Uber group) via the LOMC, which has visibility of all London affecting incidents. Additional controls are now in place to ensure that actions

relating to London incidents (i.e. Driver re-activation) can only be carried out by certain individuals with the appropriate access rights.

272. PA concluded that the interventions put in place by ULL had addressed all seven major gaps identified in the ITSM Report relating to Change and Release Management. TfL noted, in correspondence with PA, that some of the interventions made to the Change and Release Management processes were put in place as recently as March 2020, and that potentially, it is still early days to reach a view as to whether they are fully embedded and effective. TfL therefore asked PA to specifically consider this during its review, and give a view as to whether it considered that sufficient time had passed to say that the changes had embedded. PA stated (see page 6 of the PA report **[HC1/2/24]**) that whilst some interventions were put in place as recently as March 2020, the volume of changes being managed through the improved processes suggests that the interventions have now been adopted and sustained as part of business as usual processes. However, PA also noted later in the report that in order to improve its maturity level, areas for further improvement include further embedded continuous improvement around the Change and Release processes (see page 38 of the PA report **[HC1/2/24]**). PA considers that its conclusion that ULL has now achieved a maturity of 'Level 3 – Control' for both Change and Release Management processes and is maintaining a maturity of 'Level 3 – Control' for the combined Incident and Problem Management processes means that ULL's processes are fit for purpose in minimising the risk of regulatory breaches and in line with minimum expected standards for a company of this kind operating in this industry.
273. PA's review included consideration of two further areas which had been categorised by Cognizant as being weak. The first area identified by Cognizant was that multiple disjointed tools were used by different teams, making it challenging to trace end-to-end incident lifecycle. The other area identified by Cognizant was there was no unique change identifier resulting in lack of bi-directional traceability across the change life cycle; the method followed to establish links between process steps is suboptimal and resource dependent.

274. PA notes that both of these processes rely upon manual intervention. In particular, an area of most concern to TfL is the lack of cohesion between the multiple tools that are used by ULL to manage incidents. PA identified 4 different tools in the incident lifecycle which are:

- (a) Bliss – incident logging when reported at service desk (Identification)
- (b) Jira – initial investigation by Ops Commander (Triage)
- (c) Phabricator – incident passed to engineering team (Triage)
- (d) Incident Manager – for onward management through resolution and root cause analysis

275. PA says that there is a manual process to ensure that tickets (I assume this means complaint incidents) are cross-referred through the above tools. PA notes that ULL is in the process of rationalising down their tools by moving Jira into Phabricator and although this will reduce the number of tools in place, there will remain a reliance on manual processes to ensure tickets are passed from team to team. PA says that the review focused on the method used by ULL to manually pass tickets through the lifecycle and by looking at the incident data provided it has been validated that checks and balances are in place to avoid any tickets from being mis-managed.

276. However, I remain concerned about this. In Part 3, I refer to three drivers who were dismissed by ULL in late 2019 as a result of complaints being made about them, in one case, dating back to December 2016 – those complaints were classified as serious and sexual in nature. These drivers continued to be allocated thousands of trips despite complaints having been made against them. ULL explained that although the complaint was entered into Bliss, there was no entry into Jira, which meant that these complaints were not escalated at the time and not identified during the 2018 safety audit. It is only due to a process being introduced in November 2019 allowing serious complaints to be identified in Bliss, even where there was no corresponding Jira entry, which revealed these three drivers. I express my concerns about these particular cases below, but

consider that the multiple tools, and the reliance upon manual intervention, used in handling and managing complaints are inadequate and continue to put passengers at risk.

277. My current view, which I hope will assist the Court in assessing this issue in the light of the Cognizant, KPMG and PA reports is:

- (a) ULL's systems were not adequate at the time of the Decision; those inadequacies were directly connected to some of the most serious breaches that informed the Decision. That is confirmed by both the ITSM report and the KPMG Report, which identified that change and release management flaws had directly contributed to the driver photo fraud issue described above.
- (b) ULL accepts that there were weaknesses in its Change and Release Management systems at that time. It has invested effort and time in improving those systems.
- (c) KPMG's reports conclude that ULL's systems are now at a standard that would be expected of a company in its position.
- (d) The PA report offers a useful assessment of the adequacy of those new systems. In short, PA concludes that the shortcomings in ULL's Change and Release Management processes identified by Cognizant in November 2019 have been remedied. In PA's opinion, ULL's Change and Release Management processes now meet the industry standard expected of a company such as ULL.
- (e) It is important to bear in mind the improvements in ULL's systems have been prompted – in a large part – by the criticisms of TfL. TfL instructed a third party expert organisation to evaluate ULL's systems because there were patterns of behaviour and failures that left TfL unable to have sufficient confidence in ULL. It is partly through TfL's interventions that these weaknesses were identified and ULL made changes to address them. It is frustrating to me that the regulator has

had to take such steps with an operator, particularly one of which obtained its licence after having made extensive changes to its culture, governance and processes, and made a commitment to the Court and TfL to improve its performance, in 2018.

- (f) PA concluded that the changed processes have become business as usual processes. Nonetheless, they also noted (page 38 of the report **[HC1/2/24]**) that areas for further improvement included further embedding continuous improvement around the Change and Release management processes. In light of the fact that some of the interventions were introduced as recently as March 2020, I think it is fair to say that it is relatively early days and that more time is required to be confident that these interventions have sufficiently embedded.
  
- (g) There are two areas which PA identified as having been partially achieved because they both rely upon manual interventions, which I consider leads to a risk (perhaps likelihood) of errors. Although PA did not consider that they affected the overall maturity level score of 3, I consider that they are areas of weakness, and at least one of these has an impact on passenger safety. In particular, the use of multiple tools (Bliss, Jira, Phabricator and Incident Manager) in managing incidents which can (and have) compromised passenger safety. I have described above and in Part 3 below to the three drivers who were dismissed in late 2019 as a result of serious allegations of a sexual nature dating back to 2016 and 2017. The reliance upon manual intervention in cross-referring these complaints between Bliss and Jira meant that they were not identified and no action was taken, despite the historic complaints review in 2018 leading up to ULL's last licensing appeal. In my view, this causes me to retain some doubts as to the adequacy and reliability of ULL's complaint handling processes.

### **PART 3: EVENTS SINCE THE NOVEMBER 2019 DECISION**

278. Since TfL's Decision in November 2019, TfL and ULL have continued to correspond on a range of issues to ensure ULL's ongoing compliance with its licence conditions, as prescribed by the Chief Magistrate, as well as TfL.

279. I set out below some further events and correspondence which have taken place since the Decision.

#### **(i) Meetings between ULL and TfL**

280. Since TfL's Decision in November 2019, various meetings have taken place between TfL and ULL. It is commonplace for TfL to meet with representatives of all large PHV operators. The COVID-19 pandemic has meant that meetings between TfL and ULL have not taken place in person, since March 2020.

281. Meetings of this kind tend to be specifically concerned with ULL's operations. Graham Robinson, General Manager of TPH, attends on behalf of TfL and Mr Heywood attends on behalf of ULL. Such meetings took place on 10 January 2020 and 28 February 2020.

282. Although I did not attend the meeting on 10 January 2020, the notes prepared by TfL [HC1/2/15] record that in response to TfL's concerns raised about ULL's change and release Management process, ULL provided information on the work that it was undertaking to strengthen its processes and address the weaknesses found during the Cognizant review and that were highlighted in the Decision Note. ULL informed TfL that it would not be making any further product changes until this work had been finalised. ULL confirmed that it would write to TfL providing details of the changes it planned to implement to its change and release management process addressing the concerns raised.

283. Various issues were discussed at the meeting with ULL on 28 February 2020, as set out in the notes prepared by TfL [HC1/2/18]. ULL provided information on its new change and release Management processes and highlighted key accountabilities and process changes. ULL also provided details of its plan to enhance its Instadoc insurance system and highlighted that these enhancements

may lead to new types of insurance fraud being uncovered. ULL also provided updates on its plans to introduce Real-Time ID checks. TfL made clear in the meeting that the product must be fully compliant with data protection legislation before ULL launches the product.

284. I have attended and chaired meetings with Ms Powers-Freeling and Mr Heywood, senior representatives from ULL, since the Decision. Such meetings took place on 4 February 2020, 7 April 2020 and 1 May 2020.

285. At the meeting on 4 February 2020, as set out in the notes recorded by TfL **[HC1/2/17]**, we discussed further progress with ULL's proposal to implement its Real-Time ID checks for its drivers in London. ULL explained that the product would be the first process to go through ULL's new change and release management process.

286. As can be seen from TfL's note of the meeting with ULL on 7 April 2020 **[HC1/2/19]**, there were discussions about ULL's response to the COVID-19 pandemic. ULL also provided an update on the KPMG report which had been presented to the ULL Board earlier that day. TfL confirmed that it was in the process of reviewing ULL's February 2020 Assurance Report and had identified data anomalies and would write to ULL at the earliest opportunity seeking more information.

287. A meeting also took place with ULL on 1 May 2020 which primarily covered issues related to the COVID-19 pandemic. No internal note was produced of this meeting.

288. On 20 January 2020, Mr Khosrowshahi and Andrew Byrne (Director of Public Policy at Uber) met with Mike Brown, TfL's then Commissioner, and Vernon Everitt, Managing Director of Customers, Communication and Technology at TfL. I did not attend this meeting nor did any of my colleagues in TPH, although a note of the meeting was later made available to me **[HC1/2/16]**.

289. The note of the meeting stated that there was no discussion of any detailed regulatory issues given ULL's appeal against TfL's decision not to grant ULL a

PHV operator's licence. However, Mr Khosrowshahi reiterated Uber's intention to deal with all of TfL's concerns and expressed Uber's commitment to continue with its programme to change the culture of the organisation. The note records that Mr Khosrowshahi stated that the safety of passengers remained Uber's top priority and there would be an open dialogue to ensure that all matters were addressed. There was also some discussion about environmental issues and the need to tackle climate change and Uber's initiatives in this area such as introducing more electric vehicles and charging points.

## **(ii) Deactivation of drivers arising from historic allegations of sexual misconduct**

290. If a PHV operator dismisses a driver because of his/her unsatisfactory conduct in connection with the driving of a PHV, the operator must, as a condition of its licence, notify TfL in writing of the name of the driver and the circumstances of the case within 14 days (see regulation 9(4) of the Operators' Licences Regulations) **[HC1/1/3]**. This requirement applies to all operators.
291. ULL, as noted above, is also subject, since 25 June 2018, to Condition 12(b) which requires it, within 48 hours of receiving a safety related complaint concerning a driver, to notify any such decision to remove or suspend the driver to TfL, including specifying the details of the driver and the allegation. This condition is specific to ULL. The form 'PHV105' is available for the purposes of notifications arising out of regulation 9(4) and Condition 12(b). Upon receipt of this information, TfL will then consider whether the driver's PHV licence should be removed.
292. On 11 December 2019, ULL sent an email to TfL with a PHV105 notification relating to ULL's deactivation of a driver on 27 November 2019 **[HC1/3/40]**. The deactivation arose from a complaint to ULL by a passenger made on 23 April 2017 alleging sexual misconduct. The incident was reported to the police on 11 December 2019 according to the PHV105 notification. ULL stated that they would be writing to TfL as a matter of urgency to set out the background to this incident in full. TfL was very concerned about the gap of over two and half years between the complaint being made and ULL deactivating the driver's account.



293. On 17 December 2019, ULL sent an email to TfL attaching a letter **[HC1/3/41]** and three PHV105 forms for three ULL drivers **[HC1/2/27-29]**. One of these forms concerned the driver referred to in ULL's email of 11 December 2019. The letter stated that the three drivers had been deactivated as a result of historic complaints against them. In summary:

- (a) Driver 1 – ULL account deactivated on 27 November 2019 following a complaint on 23 April 2017. The driver allegedly entered the back of the vehicle after the trip had ended and locked the doors. The driver allegedly tried to kiss the passenger and attempted to take her top off **[HC1/2/27]**.
- (b) Driver 2 – ULL account deactivated on 14 December 2019 following a complaint made on 22 September 2017 regarding an incident on 21 May 2017. The driver allegedly spoke inappropriately to the passenger and touched her thigh and attempted to kiss her whilst stopped at traffic lights **[HC1/2/28]**.
- (c) Driver 3 – ULL account deactivated on 14 December 2019 following a complaint made on 12 December 2016. The driver allegedly got out of the car and groped the passenger's friend's chest and behind once she had reached her destination **[HC1/2/29]**.

294. ULL's letter dated 17 December 2019 stated that ULL records complaints in a complaints management tool called Bliss. Where the complaint relates to safety, the system requires the agent to select a category of complaint, after which the system automatically assigns one of four levels of seriousness to the complaint:

- (L1: [REDACTED]  
[REDACTED];
- L2: [REDACTED]  
[REDACTED]

- L3: [REDACTED]  
[REDACTED]
- L4: [REDACTED].

295. ULL explained that all complaints are recorded in a driver's complaint history. In addition, where a complaint is classified as [REDACTED], ULL's policies require the ULL staff member handling the complaint to create a record in ULL's case management system called Jira which keeps a record of ULL's internal investigation.

296. According to ULL's letter, ULL introduced, in late November 2019, further processes to guard against human error which involved ULL's system automatically checking Bliss for any complaints that had been classified as [REDACTED] but for which no Jira record had been created as a result of employee error. Having implemented this change, ULL ran a check against all TfL-registered drivers on the Uber app. ULL stated in its letter that the purpose of this was in part to remedy the fact that the 2018 safety audit would not have picked up any drivers about whom an [REDACTED] complaint had been made without the appropriate record in Jira. This would also pick up any such cases between that audit and the introduction of the new Bliss checking process. By way of background, ULL's 2018 safety audit was conducted in April 2018 i.e. before the previous appeal before the Chief Magistrate in June 2018.

297. As a result of this check, ULL identified the three TfL-registered drivers who warranted deactivation in relation to [REDACTED] complaints made about them in 2016 or 2017. All three drivers were subsequently dismissed and PHV 105 notifications were given to TfL. All three drivers were also reported to the police by ULL.

298. TfL immediately commenced investigations into each of these drivers which included communication with ULL for further details on these incidents. Further detail on the licensing action taken by TfL is set out below.

299. TfL also considered it necessary to raise wider concerns about ULL's delay in notifying TfL of these incidents with senior representatives at ULL. On 3 July

2020, TfL sent a letter to ULL **[HC1/3/68]** which raised various questions related to ULL's 17 December 2019 letter. In particular, TfL was concerned that ULL's letter had failed to set out how many journeys each of these three drivers had undertaken in the period between the receipt of the [REDACTED] complaints in 2016 or 2017 and the date of dismissal in late 2019.

300. ULL provided the number of trips in its letter dated 15 July 2020 **[HC1/3/70]**. The number of trips taken was: (i) Driver 1 – 10,230, (ii) Driver 2 – 8,126 and (iii) Driver 3 – 13,736. This demonstrates the point I raised earlier that one breach can lead to several thousand trips being affected.
301. I am concerned that despite [REDACTED] complaints being made in 2016 and 2017 against the three drivers, each of these drivers were able to continue working for ULL unhindered until December 2019. The number of trips taken by these drivers in this intervening period is extremely alarming. Passenger safety was severely compromised during this intervening period.
302. ULL stated in its letter dated 17 December 2019 that they were confident that they had now reviewed the complaint histories for all TfL-registered drivers about whom an [REDACTED] complaint had been logged in Bliss since January 2016, whether or not a Jira was created at the time.
303. Unfortunately, I do not feel able to share ULL's level of confidence on this question. TfL has received repeated assurances from ULL that thorough and comprehensive audits have been conducted to disclose any safety-related issues involving its drivers. ULL also gave such assurances to the Chief Magistrate in June 2018 during the last appeal. ULL has previously identified a significant number of additional incidents and cases via various different retrospective audits and checks. It is very troubling that these allegations of sexual assault dating back to 2016 and 2017 were only identified and addressed in December 2019.
304. TfL's letter dated 3 July 2020 **[HC1/3/68]** requested further information from ULL regarding its previous audits. ULL's letter dated 15 July **[HC1/3/70]** explained that it was only from April 2018 that ULL decided to deactivate driver accounts in

response to a first [REDACTED] complaint of sexual misconduct, even where ULL was unable to establish the truth of the passenger's allegation. ULL's policy in April 2018 was also to deactivate drivers where a number of lower-level complaints had been made about the driver. At the same time as ULL changed its safety complaints policy, it conducted the 2018 safety audit of historic complaints.

305. ULL accepts, in its letter dated 15 July 2020, that given each of these three drivers had an [REDACTED] sexual misconduct complaint made against them, they should have had their accounts deactivated during the 2018 safety audit. ULL states that the reason these drivers were not picked up in the 2018 safety audit for the [REDACTED] complaints was that the 2018 safety audit reviewed Jira records and no Jira record had been created for these complaints.
306. ULL also concedes in the same letter that due to a failure to categorise two of Driver 1's [REDACTED] complaints as sexual misconduct, he did not qualify, as he should have done, for inclusion on that basis in the 2018 safety audit. This was another missed opportunity.
307. I consider ULL's explanation to be unnecessarily complex and I do not fully understand why its safety audit in 2018 failed to identify these three drivers, particularly in light of the assurances given at that time in its letter dated 22 June 2018 [HC1/3/31]. As noted above in paragraphs 273-276 in my discussion of the PA report, I am concerned by the multiple tools in use to handle and manage complaints, including safety related complaints. The reliance upon manual intervention in my view creates inherent risks of failure and potentially compromises safety.
308. On 24 February 2020, ULL sent a letter to TfL which acknowledged deficiencies in the combination of how Bliss and Jira work together and conceded that '*there can be human errors such as forgetting to link a document...*' [EX1/4/175]. The letter stated that UTI was developing a new tool called Bliss Case Management to simplify the complaints process by eliminating the need for a separate Jira and thus reducing human errors in handling and documenting these cases. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

309. The three cases referred to above are a prime example of the deficiencies in the Bliss and Jira systems and reliance upon manual intervention which suggests that change is needed within ULL's systems more urgently. I am surprised that ULL has not taken steps to accelerate the rollout of Bliss Case Management in London given the deficiencies identified in its complaints system.
310. I was also concerned that ULL's letter of 17 December 2019 [HC1/3/41] seemed to focus on the fact that none of the three drivers went on to receive any further [REDACTED] complaints following these incidents, although there was clearly a pattern of other serious allegations for each of these drivers after the [REDACTED] complaint.
311. According to the PHV105 form for Driver 1, the L3 complaint in question was made on 23 April 2017 [HC1/2/27]. The date of Driver 1's first booking was 21 October 2015 and the last booking was 27 November 2019. The form listed 71 'Quality-Related Complaints' and 14 'Safety-Related Complaints'.
312. Following the [REDACTED] incident on 23 April 2017, there were several other safety-related complaints. I refer to some of these below (the wording is as per the description of the incident in ULL's notification to TfL):
- (a) 2 July 2017 – complaint made about driver being very unprofessional, calling the passenger beautiful a handful of times and asking questions about her home life. The young female passenger travelling on her own was made to feel very unsafe;
  - (b) 12 December 2017 – two female passengers in the car, the driver made comments like 'beautiful ladies' and suggested one of the passengers take a day off to see him and stay in the car to take her home. This was a very uncomfortable ride for the two passengers;

- (c) 31 December 2018 – report from the passenger that the driver had asked them for their phone number.

313. These three additional complaints, in particular, clearly demonstrate a pattern of inappropriate behaviour by this driver with regard to female passengers. The PHV105 notification also records various other complaints in relation to this driver, including poor driving, swearing and rudeness.

314. According to the PHV105 notification for Driver 2, the ■■■ complaint was made on 22 September 2017 in relation to an incident on 21 May 2017 [HC1/2/28]. The date of Driver 2's first booking was 8 February 2014 and the last booking was 12 December 2019. The form listed 47 'Quality-Related Complaints' and 8 'Safety-Related Complaints'.

315. Following the ■■■ incident on 21 May 2017, there were several other safety-related complaints. I refer to some of these below (the wording is as per the description of the incident in ULL's notification to TfL):

- (a) 13 August 2017 – complaint from passenger who said the driver flirted inappropriately with her and made her feel very uncomfortable;
- (b) 7 December 2017 – complaint made describing the driver as 'pervy'.

316. These additional complaints, in particular, clearly demonstrate a pattern of inappropriate behaviour by this driver with regard to female passengers. The PHV105 notification also records various other complaints for the driver, including allegations of unsafe driving.

317. According to the PHV105 notification for Driver 3, the ■■■ complaint was made on 12 December 2016 [HC1/2/29]. The date of Driver 3's first booking was 30 July 2015 and the last booking was 13 December 2019. The form listed 142 'Quality-Related Complaints' and 10 'Safety-Related Complaints'.

318. Following the ■■■ incident on 12 December 2016, there were several other safety-related complaints. I refer to one of these below (the wording is as per the description of the incident in ULL's notification's to TfL):

- (a) 1 November 2017 – passenger complained that the driver was ‘hitting on me’ and asking for her number and Facebook account after her boyfriend got out of the car halfway through the journey. The passenger said she did not feel safe and made the driver stop earlier than her house.

319. Furthermore, there was also a complaint on 10 August 2016, pre-dating the [REDACTED] complaint on 12 December 2016, which stated that the driver made the passenger feel uncomfortable by commenting on her looks and telling her that if she was his girlfriend he would sit her on his lap. He also asked probing questions such as ‘do you live alone’ which made her feel very awkward.

320. These additional complaints clearly demonstrate a pattern of inappropriate behaviour by this driver with regard to female passengers. The PHV105 notification also records various other complaints for the driver, including allegations of racism and unsafe driving.

321. As set out in the complaints history for each of the three drivers, all the drivers were subject to serious safety-related complaints after the relevant [REDACTED] incident. I expect many of these subsequent complaints would have been categorised as [REDACTED] and clearly demonstrated a pattern of inappropriate behaviour by each of the three drivers which made passengers feel unsafe and vulnerable. If these drivers had been swiftly dismissed after the respective [REDACTED] complaints, these further incidents could have been avoided.

322. I am surprised that this issue, and the correspondence between ULL and TfL in December 2019, has not been referred to in ULL’s witness evidence for this appeal which was served on 3 April 2020.

323. Finally, ULL’s letter dated 15 July 2002 [**HC1/3/70**] notes that the three drivers continue to have valid TfL licences and can therefore be assigned trips by other PHV operators.

324. As noted above, TfL immediately investigated these three drivers upon receipt of ULL's letter dated 17 December 2019. Any allegation of a sexual nature is extremely concerning and such conduct is unacceptable for any licensed driver.
325. However, we know from dealing with similar complaints where ULL has failed to take action at the appropriate time, that police investigations into such allegations can be hampered due to the passage of time between the date of the incident and the commencement of any police investigation. Complainants can also be reluctant to assist such investigations if significant time has elapsed between the alleged incident and the investigation commencing.
326. Our licensing team reviewed the complaints following receipt of the driver dismissal forms and, due to the passage of time that had elapsed between the complaint and the driver dismissal notification and no further information being received from the complainants, they issued a warning to Driver 1, words of advice to Driver 2 and a warning to Driver 3. However, in my view this licensing action was incorrect.
327. During the preparation of my evidence for this appeal, I have reviewed these cases in conjunction with senior representatives within the TPH team. This review considered that the previous decisions by TfL accorded a disproportionately higher weight to the time that had elapsed since the allegations.
328. On 29 July 2020, further to this review, TfL decided to immediately revoke the licenses of Driver 1, Driver 2 and Driver 3. They are therefore no longer licensed to work as a PHV driver in London.
329. As indicated above, ULL's significant delays in deactivating drivers has an impact on TfL's ability to effectively take licensing action against drivers such as these.
330. For example, TfL considered the appropriate licensing action to take against the substantial number of drivers that were dismissed by ULL following the historic complaints review conducted by ULL in 2018 prior to the previous licensing appeal before the Chief Magistrate.



331. Inevitably, TfL found that investigations into driver behaviour that occurred several years ago are more difficult as complainants may no longer wish to cooperate, or cannot be identified easily, and with the lapse of time, memories tend to fade.
332. In some of the historic cases, TfL revoked the licences of drivers who subsequently appealed to the Magistrates' Court. However, in some cases the Magistrate then allowed an appeal against that decision and granted the driver a licence because they considered there had been an unacceptable period of delay between the incident in question and TfL taking licensing action.
333. In situations where ULL has dismissed drivers a long time after the initial complaint of serious misconduct, therefore, this has significant consequences in terms of TfL's ability to regulate the conduct of licensed drivers. Although it is accepted that condition 12(b) was not in place at the time of the ■ incidents for these three drivers, TfL should have been notified of their misconduct far earlier.
334. In summary, I am now satisfied that the correct licensing action has been taken against the three drivers because the alleged behaviour is serious and the overall pattern of allegations and conduct is not consistent with a fit and proper driver. However, ULL's delays in identifying the complaints and notifying TfL have compromised public safety and compromised our role as a regulator in ensuring the correct and appropriate action is taken in a timely manner and can be properly investigated. The original decisions taken by my licensing team in these cases placed disproportionate weight on the time that had passed since the alleged conduct. Their approach was informed by the criticisms that have been made in some previous licensing cases concerning decisions of TfL regarding the passage of time between the underlying incidents and the decision to revoke a licence. However, on review, I believe the correct action in these cases has now been taken.

### **(iii) Real-time ID checking**

335. Condition 18 of ULL's licence granted on 26 September 2019 requires ULL to maintain and implement appropriate systems, processes and procedures to

confirm that a driver using the app is an individual licensed by TfL and permitted by ULL to use the app.

336. On 24 November 2019, ULL sent a letter to TfL concerning its plans to introduce a Real-Time ID check in the Driver app in the UK and Ireland **[EX1/4/155]**. ULL stated in its letter that it is designed to further minimise any possibility for drivers to fraudulently participate in unauthorised account-sharing. ULL's letter stated that the Real-Time ID check, when triggered, involves comparing a driver's profile picture (which has previously been verified against their ID document) with a real-time driver selfie. The driver will only be able to go online if it is determined that the faces in these two photos match.
337. TfL considered this letter as part of its Decision on 25 November 2019 (see para 164 of the Decision Note) although it noted that '*due to the date on which this notification was received, it has not been possible to fully consider this proposed change to the Uber driver app*' **[EX1/4/156/2517-2518]**.
338. Since the Decision, there has been further correspondence on this issue between ULL and TfL. On 23 December 2019, TfL sent a letter to ULL responding to ULL's proposals **[HC1/3/42]**. TfL raised a number of issues with ULL on the proposed technology on which it required further information, particularly in the light of the decision to refuse ULL a licence for which one of the reasons was concerns about the vulnerability of ULL's system and processes when introducing system changes.
339. On 24 January 2020, ULL sent a letter in response to TfL **[EX1/4/170]**. ULL stated in its letter that the new Real-Time ID product built on ULL's existing efforts to identify and prevent drivers who are not supposed to be there from operating on the Uber platform. These includes implementation of a new profile picture review process that compares a profile picture against a driver's PHDL number and a new requirement for all profile pictures to be taken at an Uber Greenlight Hub, on an Uber-managed device and against a unique Uber-background. ULL provided TfL with a copy of its Data Protection Impact Assessment for the Real-Time ID product on 26 March 2020.

340. On 23 April 2020, ULL sent a letter to TfL outlining its plan to begin rollout of the Hybrid Real-Time ID product in London on 30 April 2020 [HC1/3/46]. The letter stated that the rollout would be phased and gradual, initially to just 1% of drivers.
341. On 22 June 2020, ULL sent an email to TfL providing an overview of its correspondence with TfL and key activities in May [HC1/3/57]. This email stated that ULL continued to monitor the rollout of Real Time ID and were on track to have rolled it out to 25% of the driver population by the end of June 2020. This extended rollout was also discussed in meetings between ULL and TfL.
342. On 20 July 2020, ULL sent a letter to TfL providing an update on the rollout of Real-Time ID [HC1/3/71]. ULL stated that the technology is working effectively and that no issues affecting compliance or safety have been identified with the rollout to date. ULL stated that the product has been released to approximately 25% of active drivers in London and the frequency with which it is triggered remains as planned, with drivers being required to [REDACTED]. ULL plans to roll out Real-Time ID to 100% of drivers in London by September 2020.
343. According to the letter dated 20 July 2020, the rollout has led to ULL deactivating three drivers' accounts following apparent account-sharing that was picked up by the technology. TfL has since revoked the licences of all three drivers.
344. [REDACTED]
345. TfL has taken an active interest in ULL's proposals with regard to this product. There are clear benefits to the product and TfL supports any technology which increases passenger safety by ensuring the driver is licensed by TfL and permitted to use the Uber app. [REDACTED]

[REDACTED]

[REDACTED]

346. I consider the use of this product is a step in the right direction although clearly its implementation is still at a very early stage. I therefore cannot meaningfully comment on the effectiveness of it at this stage.

**(iv) Drivers making journeys after expiry of MOT certificates for vehicles**

347. On 21 February 2020, ULL sent a letter to TfL regarding an issue whereby seven TfL-licensed drivers had been able to take a total of ten trips after the MOT certificate for their vehicles, which was uploaded on ULL's system, had expired [HC1/3/45]. These cases occurred between March 2019 and January 2020.

348. The root of the problem was a design flaw in Uber's system for ensuring that drivers are not able to take trips when their MOT expires. This flaw meant that drivers were able to take trips for up to one hour after midnight in the day on which their MOT certificates or exemption had expired.

349. ULL stated in its letter that it first became aware of this issue in January 2020 when they identified two cases from November 2019 in which two drivers were able to take one trip each between midnight on the day on which their MOT exemption had expired and 1am.

350. The subsequent investigation found that, under certain conditions, when a document was uploaded manually or an exemption was applied by Uber's systems within the final hour of the document/exemption's valid period, the document/exemption was allowed to remain on the driver's profile for up to one hour longer than it should have been.

351. ULL explained that once the investigation had identified the root cause, Uber's engineering team identified and proposed a technical solution to fix the issue. This was presented to, and approved by, the LOMC on 11 February 2020. As this was a narrow technical fix to an existing product, ULL determined that it did not need to go through its full change and release management process. ULL stated it is confident that this fix will prevent this issue from recurring.

352. While the volume of trips involved in this case are relatively small, this is another concerning incident, which appears to support the conclusion in the Decision that there have been systemic weaknesses in ULL's systems, similar to the flaws which precipitated the driver photo fraud issue. Notwithstanding the findings in the KPMG report commissioned by ULL and the PA report commissioned by TfL, it is difficult for TfL to share ULL's confidence that similar issues will not continue to arise given previous incidents. I am also surprised that ULL's witness evidence for the appeal fails to consider this issue which has arisen since the Decision and prior to service of ULL's evidence in this appeal.

**(v) Instadoc**

353. On 27 February 2020, ULL sent TfL a letter outlining proposals to expand coverage of its Instadoc programme which ULL describes as an IT solution through which insurance companies are able to provide copies of insurance certificates and data directly to ULL [EX1/4/177]. Instadoc means that drivers who are insured with an insurer integrated into Instadoc do not have to upload certificates manually which ULL says reduces the chance of a fraudulent document being uploaded as the driver's insurance document is submitted directly to ULL by the insurer.

354. ULL set out its plans to expand Instadoc coverage in its 27 February 2020 letter by auto-enrolling all drivers insured with one of the five integrated insurance providers as well as improving Instadoc functionalities to address known limitations.

355. Given the significant problems related to fraudulent insurance documents detailed in the Decision Note and above, this is an important step to reduce the risk of drivers working for ULL with fraudulent paperwork. These improvements will make it harder for drivers to undertake work for ULL without being appropriately insured.

356. On 26 March 2020, ULL sent an email to TfL regarding 13 dismissal notifications for drivers which related to the work that ULL had carried out with Nelson Insurance Company (Nelson) when it was being integrated into Instadoc

**[EX1/4/186]**. Further to the collaboration with Nelson, ULL stated it had identified insurance certificates which, on their face appeared valid, but related to policies which had in fact been cancelled or adjusted and the driver had failed to inform ULL of this.

357. On 8 July 2020, TfL sent a letter to ULL expressing concern that the May 2020 Assurance Report had referred to these 13 drivers as a 'regulatory concern' **[HC1/3/69]**. TfL considered that a driver taking journeys, which have been allocated by ULL, without appropriate insurance should be categorised as a regulatory breach: it is a very serious matter. Therefore, the categorisation of 'regulatory concern' did not adequately reflect the seriousness of these cases.
358. On 9 June 2020, ULL sent an email to TfL regarding the integration of another insurance provider, Haven, into its Instadoc system **[HC1/3/56]**. According to ULL, Haven is the largest provider of insurance policies in its systems, with around [REDACTED] policies. TfL's letter dated 8 July 2020 **[HC1/3/69]** noted that ULL provided details of 60 drivers who had been dismissed due to Haven insurance policies which had been prematurely cancelled without ULL's knowledge. In several of those instances, the insurance policy was cancelled before the certificate was provided to ULL.
359. As noted in TfL's letter dated 8 July 2020, there is clearly an issue with drivers working for ULL prematurely cancelling their insurance. TfL therefore sought further information on the measures taken by ULL to mitigate against this happening for those drivers insured by a company not yet integrated within Instadoc.
360. There were also 7 drivers dismissed by ULL for providing fraudulent insurance policies as a result of the addition of Haven to the Instadoc system. As noted in TfL's letter dated 8 July 2020, in one of these cases it appears that ULL accepted a fraudulent private hire licence and allocated bookings to the driver after his licence had expired. This is a matter of significant concern and TfL sought further information on all seven cases of fraudulent insurance. TfL has since revoked the licences of six of these drivers and the licence for the seventh driver has expired.

361. ULL's letter dated 20 July 2020 [HC1/3/72] included a response to TfL's queries related to the expansion of Instadoc in the May 2020 Assurance Report as set out in TfL's letter dated 8 July 2020. ULL explained, at length, that the extent of premature cancellation of insurance is widespread and that as soon as ULL is informed of a cancellation, steps are taken to immediately suspend the driver's access to the Uber app until a new insurance document is uploaded and verified.
362. ULL stated in its letter that the Instadoc technology enables ULL to '*better identify and eliminate industry-wide issues of insurance fraud and deception where an insured driver has cancelled the policy directly with the insurer and (in contravention of our terms and conditions) has not informed ULL, the operator*'. TfL recognises that ULL is seeking innovative solutions in this area with its Instadoc technology and notes that the extent of Instadoc usage has expanded from 18% of drivers in February 2020 to 69% of drivers in June 2020. However, one consequence of this expansion has been the discovery of further incidents of insurance fraud, particularly the problem of premature cancellation. While we support ULL's efforts to tackle this issue and demonstrate innovation, regardless of the route by which insurance fraud is detected, I consider that instances of insurance fraud should be correctly categorised as regulatory breaches in ULL's Assurance Reports.
363. ULL's letter dated 20 July 2020 also responded to TfL's concerns about what measures ULL is taking for insurance companies that are not yet integrated with Instadoc. All insurance documents are individually validated by two document agents and any suspicion of fraud leads to ULL contacting the insurance company to verify the policy. [REDACTED]  
[REDACTED]  
[REDACTED]. Furthermore, ULL notes that it is keen to discuss any ways in which other PHV operators are systematically identifying premature cancellation of insurance.
364. My overall conclusion arising out of these cases is that the development of the Instadoc system is a positive step, that will make a material contribution to eliminating insurance fraud, particularly sophisticated fraud. TfL is supportive of

ULL's steps to innovate in this area and ULL's approach should be seen as leading the PHV industry in the right direction. TfL acknowledges that by expanding Instadoc, ULL will uncover instances of fraudulent insurance documents which may have remained undiscovered. However, in my view it is important to acknowledge that such cases do constitute regulatory breaches. The numbers of cases that have been identified as new providers are integrated into the Instadoc system have caused me concern and have highlighted the significant number of ULL drivers who have been able to drive without insurance in the past.

#### **(vi) Data management issues**

365. The issue of data management is addressed at paragraphs 51-59 of the Decision Note **[EX1/4/156/2481-2489]**. It is not directly addressed in Mr Heywood's statement.

366. As noted in the Decision Note, ULL has undergone an important shift in this area and its approach is now more consistent with what TfL would expect from a fit and proper operator.

367. However, there are two incidents of concern with regard to data management since the Decision: a data outage in April 2020 and the inadvertent disclosure of data relating to ULL customers as part of a sale involving Uber Eats in India to a third party.

#### *Data Outage*

368. On 11 May 2020, ULL notified TfL of an outage within an Uber data centre which resulted in two London drivers being able to take three trips immediately after the insurance certificate for their vehicle had expired **[HC1/3/47]**. These cases occurred on 2 April 2020.

369. According to ULL, the cause of the problem was an outage affecting one of ULL's main data centres on 25 March 2020 which lasted until 1 April 2020. The outage disrupted ULL's automated documents expiry task whereby all expiring



documents are automatically deactivated two hours prior to the time the document ceases to be valid. ULL states that the outage was detected quickly and its engineering team blocked any software changes to ensure continued product stability. During the period of the outage, ULL was unable to reinstate the automated documents expiry task so immediately put in place a manual temporary fix instead to cover the outage period.

370. ULL stated that on 1 April 2020, the data centre was fully functional again and its engineering team began to allow software changes to be deployed to production once more. ULL explained that during the transition, there was a gap of around four hours between the manual temporary fix being discontinued and the fully automated script being reinstated. As a result, there was a period of time, from 21:00 on 1 April to 01:17 on 2 April, during which the documents' expiry task was not running. This appears to have been unintended. ULL stated that the engineering team immediately investigated and took action at 01:17 on 2 April to restart the temporary manual fix to deactivate documents that were active past their valid date.
371. As a result of this incident, there were windows of 82 minutes and 85 minutes respectively during which two insurance certificates were still active in ULL's systems beyond their expiry date. This meant that two drivers were able to take a total of three trips with an expired insurance document. Both drivers were dismissed by ULL as a result of taking trips without valid insurance.
372. ULL stated that the issue was resolved when the required update was made on 2 April 2020 to deploy the automated documents expiry script. ULL also noted that the issue was rapidly detected and resolved. Mr Heywood expressed regret in the email dated 11 May 2020 that three trips were taken without valid insurance and recognised the need for drivers to have valid insurance in place at all times **[HC1/3/47]**.
373. On 9 June 2020, TfL sent an email to ULL seeking further information with regard to the incident **[HC1/3/55]**. TfL also sought clarity as to why the data outage was only notified to TfL on 11 May, almost six weeks after the incident occurred.

374. ULL sent a response by email to TfL on 23 June 2020 [HC1/3/66]. ULL stated that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. Following this outage, various mitigations have been reviewed and implemented as set out in ULL's email.
375. TfL raised some further queries with ULL on this incident in its letter dated 3 July 2020 [HC1/3/68] and repeated the request for information as to why there was a delay in notifying TfL of this issue which had not been considered in ULL's response dated 23 June 2020.
376. ULL responded further on this issue in its letter dated 15 July 2020 [HC1/3/70]. ULL stated that the outage initially began on 25 March 2020 and the specific failure that led to the issue of trips being taken with expired insurance took place on 1 April 2020. ULL's investigation only reached a definitive conclusion of which drivers were affected on 28 April 2020.
377. ULL stated that the results of its technical analysis were presented to the LOMC on 28 and 29 April 2020 which advised that the incident should be notified to TfL as a regulatory breach and the affected drivers deactivated. ULL stated that the drivers were deactivated on 4 May 2020 and the relevant notifications sent to TfL on 11 May 2020.
378. ULL considers that notification to TfL would not have been helpful or appropriate until it had a clear understanding of the drivers affected by the outage and the exact nature of the technical issue which caused the problem. I do not accept this explanation as there have been notifications given to TfL previously where the root causes are yet to be established. TfL has also made it clear to ULL that it expects prompt notifications of such issues. I note that there was still some delay between the LOMC authorising disclosure of the issue to TfL on 29 April 2020 and TfL receiving the email describing the incident on 11 May 2020. TfL remains of the view that prompt disclosure of potential regulatory breaches is essential, even if investigations into the root cause are still at an early stage.

However, I do also recognise and acknowledge that this incident occurred at the height of the COVID-19 pandemic and this may well have contributed to the delay.

379. It is disappointing that TfL has considered it necessary to request further information from ULL about incidents such as regulatory breaches. This seems to contradict Mr Heywood's assertion in his statement that '*we now deliberately try to err on the side of sharing information with TfL early*' [Heywood ¶38].
380. The matter of the data outage was also considered by PA in its report (page 18 of [HC1/2/24]). PA also noted that whilst the incident occurred on 1 April 2020, TfL were not informed until 11 May 2020. PA concluded that it would be beneficial if a reporting timeframe was defined by TfL and implemented in conjunction with ULL. I do not consider that the absence of a prescriptive timeframe for reporting regulatory breaches precludes ULL from providing timely notification of incidents of this kind.
381. PA also noted that the most significant issue was ULL's decision to adopt a 'Big Bang' approach to their deployment to a primary data centre (page 18 of [HC1/2/24]). PA considered this can be a valid approach to software deployment and it is mitigated by their ability to fail over to a secondary data centre, but a more staggered and reduced risk approach would be beneficial. I therefore remain concerned that there are still vulnerabilities in how ULL deploys new software and the associated risks to data if such deployments are flawed. This demonstrates that there is still more to be done by ULL with regard to its data management to ensure its systems are fully protected.

#### *Data incident in India involving Uber Eats*

382. On 16 February 2020, ULL sent an email to TfL concerning a data incident which occurred in connection with the sale in January 2020 of the Uber Eats business in India to Zomato [HC1/3/44]. As part of the sale to Zomato, as a result of human error, UTI inadvertently transferred the data of approximately 14,478 UK Eats/Rides users. UTI were made aware of this and notified Zomato who confirmed on 6 February 2020 that the data had been deleted. ULL stated that

its Data Protection Officer had confirmed no notification was required to any data protection authority.

383. On 3 July, TfL sent a letter to ULL with enquiries regarding the incident **[HC1/3/68]**. ULL provide a reply in its letter dated 15 July 2020 **[HC1/3/70]**.
384. TfL sought information on why data of over 14,000 UK Eats and UK Rides users was included in data forming part of the sale of Uber Eats in London. It was unclear why the data of ULL customers would have been included in the data forming part of the sale of a different entity of Uber. ULL stated that there is no legal, regulatory or security requirement for Uber to segregate user data as it relates to different lines of business.
385. Further detail was provided by ULL on the reason for the inadvertent transfer. Zomato was supposed to be provided with data about users who: (a) had an India 'attribute' (i.e. their phone, billing address or primary email address was in India); and (b) had ordered from Uber Eats in India after 1 July 2019. According to ULL's letter, due to an error the user data transferred to Zomato accounted for category (a) but was not limited to category (b).
386. The data was transferred to Zomato on 20 January 2020 and UTI first became aware of the issue on 2 February 2020. On 6 February 2020, UTI received confirmation from Zomato that the data had indeed been fully deleted from its systems. Zomato therefore had access to this data for 18 days.
387. Although the issue appears is now resolved relatively quickly and there is little evidence of any UK-based users of the Uber app receiving any unsolicited material, it is still of concern that the data for almost 14,500 UK-based users was transferred following the sale of an entirely different part of UTI's business in an entirely different country.

#### **(vii) Organisational changes at Uber**

388. On 19 May 2020, ULL sent TfL an email informing it of Uber's announcement to reduce its global headcount by 3,000 people, in addition to 3,700 further

redundancies that had previously been announced. ULL confirmed these changes were likely to affect Uber's business in the UK. On 21 May 2020, TfL sent an email to ULL seeking details of any material changes to ULL's personnel that may affect compliance with legislation or any conditions on ULL's licence, before any changes were introduced.

389. ULL sent an email on 21 May 2020 confirming it would update TfL with details of the teams that are materially impacted by the anticipated redundancies. ULL assured TfL that it did not anticipate, and would not approve, any proposals that would negatively impact its ability to deliver safe and compliant trips in London **[HC1/3/48]**.

390. I understand the challenges being faced by organisations in the wake of the COVID-19 pandemic and TfL is also not immune to these difficult challenges. ULL, like many other businesses, need to make difficult decisions regarding personnel. I note the assurances provided by ULL in its email dated 21 May 2020 and verbally by Ms Power-Freeling.

391. However, given the volume of regulatory breaches currently being incurred by ULL, in the event that ULL continues to operate in London after this appeal, I would be concerned if I were to learn that ULL is cutting any of its workforce responsible for ensuring regulatory compliance as this would inevitably impact on its ability to meet its regulatory obligations. At the time of this statement, TfL has not received an update from ULL on its redundancy consultation which ULL stated was due to conclude at the end of June so I am unable to offer an opinion to the Court on how this might further affect ULL's ability to comply with its regulatory obligations.

#### **PART 4: CONCLUSION**

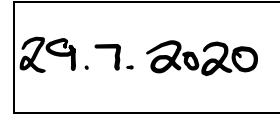
392. I have set out above the matters that TfL considers are relevant for the Court to consider when determining whether ULL is now a fit and proper person to hold an operator's licence.

393. I believe that the facts stated in this witness statement are true.

Signed

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'H Chapman'.

Date

A rectangular box containing the handwritten date '29.7.2020' in black ink.

**Helen Chapman**

**Respondent  
H Chapman  
HC1  
29 July 2020**

**IN THE WESTMINSTER MAGISTRATES' COURT**

**IN THE MATTER OF AN APPEAL UNDER THE PRIVATE HIRE VEHICLES  
(LONDON) ACT 1998**

**B E T W E N:**

**UBER LONDON LIMITED**

**Appellant**

**-and-**

**TRANSPORT FOR LONDON**

**Respondent**

**-and-**

**LICENSED TAXI DRIVERS ASSOCIATION**

**Interested Party**

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**EXHIBIT HC1**

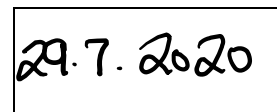
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This is the exhibit marked HC1 referred to in the Witness Statement of Helen Chapman.

Signed



Date



**Helen Chapman**